

**STATE OF NEW HAMPSHIRE**  
**SITE EVALUATION COMMITTEE**

**November 28, 2018 - 1:20 p.m.                      DELIBERATIONS**  
49 Donovan Street  
Concord, New Hampshire

**DAY 1**  
**Afternoon Session ONLY**

*{Electronically filed with SEC 12-14-18}*

**IN RE:                      SEC DOCKET NO. 2015-04**  
**Application of Public**  
**Service of New Hampshire**  
**d/b/a Eversource**  
**Energy for Certificate**  
**of Site and Facility**  
***(Deliberations)***

**PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:**

**Patricia Weathersby**  
*(Presiding Officer)*

Public Member

**David Shulock, Esq.**  
**Elizabeth Muzzey, Dir.**  
**Charles Schmidt, Admin.**  
**Christopher Way, Dep. Dir.**  
**Michael Fitzgerald, Dir.**  
**Susan Duprey, Esq.**

Public Utilities Comm.  
Div. of Hist. Resources  
Dept. of Transportation  
Div. of Economic Dev.  
Dept. of Env. Services  
Public Member

**ALSO PRESENT FOR THE SEC:**

**Michael J. Iacopino, Esq.**                      Counsel for SEC  
**Iryna Dore, Esq.**                                Counsel for SEC  
*(Brennan, Lenehan, Iacopino & Hickey)*

**Pamela G. Monroe, SEC Administrator**

*(No Appearances Taken)*

**COURT REPORTER: Cynthia Foster, LCR No. 14**

## I N D E X

### **AESTHETICS** continued by Mr. Shulock

Identification of the area of potential visual effect being the 3-mile either side of the corridor plus those other properties that were identified as having effect outside of the corridor	3
Straw poll	27
Identification of scenic resources under Site 102.45 for the Visual Impact Analysis	28
Straw poll	64
Methodology	70
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Individual locations and how people feel about the scope and scale of the change in the landscape and the extent to which the Project will be a dominant and prominent feature within that landscape	94



1 speak up. People can't hear you.

2 SPEAKER IN AUDIENCE: Speak up, please.

3 MR. SHULOCK: So why don't we start there  
4 with people's view on that methodology. I mean,  
5 I can give you mine. And I think that it was a  
6 logical methodology for narrowing the number of  
7 sites that need individual review in the  
8 analysis.

9 MS. DUPREY: When you asked what we thought  
10 of it, are you meaning the process, all the  
11 layers of the process that he put into place?

12 MR. SHULOCK: I believe that's part and  
13 parcel of what people were complaining about.

14 MS. DUPREY: Yes.

15 MR. SHULOCK: And then that there was  
16 subjectivity in that, even though things were  
17 assigned numerical values.

18 MS. DUPREY: So just to respond to that,  
19 unfortunately, I think scenic is inherently  
20 subjective, in the eye of the beholder, and I  
21 know I questioned him about that issue of how  
22 many layers he was applying to each thing  
23 because there had been so much criticism of it.

24 And the response that I got from him was

1           that this is the way that these studies are  
2           done, using these kinds of methods to winnow  
3           down the list or impose a grid, if you will,  
4           over the sites was standard in the industry. I  
5           had thought it was probably standard in the  
6           industry, but I wanted to hear it directly from  
7           a person who was an expert at it. So I  
8           personally was satisfied by that.

9           I do realize that when you impose those  
10          kinds of grids that the likelihood is that  
11          you're not expanding the universe. You're  
12          contracting the universe in all probability, but  
13          it seems to me that you have to evaluate each of  
14          these sites in some way, and that he was  
15          applying characteristics which he described as  
16          being the norm nationally to do this sort of  
17          thing. He appeared to have the credentials in  
18          his resume to make those kinds of judgments and  
19          testified that the judgments that he was making  
20          in terms of the criteria he was applying were  
21          standard.

22          Now, it may be that we might quarrel with  
23          the means in which he applied his own criteria,  
24          but the criteria themselves, itself, didn't jump

1 out to me as being inappropriate to what the job  
2 was.

3 PRESIDING OFFICER WEATHERSBY: I want to be  
4 sure that we're clear as to exactly what we're  
5 talking about right now. Are we, you seem to be  
6 slipping into, maybe intentionally, discussing  
7 his assessment of the resources rather than his  
8 identification of the resources which is what I  
9 thought we were going to talk about.

10 MS. DUPREY: Sorry. I was doing that.  
11 Sorry.

12 PRESIDING OFFICER WEATHERSBY: So I think  
13 that identification of the resources started  
14 with LandWorks looking out that ten miles,  
15 applying the viewshed analysis, photo sims, and  
16 getting down to visual study area of 10 miles  
17 came down and determined the area of potential  
18 visual impact, I think, I forget the term, would  
19 just be three miles and then in that, he came up  
20 with a number of sites.

21 So I think there's a few things in there.  
22 Are the 10 miles and 3 miles correct to use the  
23 bare-earth analysis correctly. His methodology,  
24 was it all correct, and then what he said what's

1 a scenic resource, was that, would that  
2 encompass enough.

3 So how about the 10-mile, I think the  
4 10-mile was from our rules, right?

5 DIR. MUZZEY: The 10-mile is required in  
6 our rules. Could you refer us to where the  
7 3-mile part of the analysis is?

8 PRESIDING OFFICER WEATHERSBY: He  
9 determined that his area of potential visual  
10 effect was three miles on each side of the  
11 corridor so six miles.

12 MR. SHULOCK: I understand that was after  
13 looking at 10 miles on the topographical, using  
14 the bare-earth plus topography map.

15 PRESIDING OFFICER WEATHERSBY: 3-D  
16 modeling.

17 MS. DUPREY: Is it 10 miles on each side or  
18 10 miles total?

19 PRESIDING OFFICER WEATHERSBY: 10 miles  
20 each side and then --

21 MS. DUPREY: So 20 miles.

22 PRESIDING OFFICER WEATHERSBY: So 20 miles,  
23 and then by applying the modeling and bare-earth  
24 analysis, he determined it would be three miles

1 each side so six-mile corridor with an area of  
2 potential visual impact. I can find that if  
3 someone needs me to find it.

4 MS. DUPREY: I am not looking at the  
5 testimony, but I'm sort of remembering him  
6 saying, and it might have been when he came  
7 back, that with bare-earth you could see  
8 everything. Did he not say that? At one point?  
9 Maybe I need to go back and look at the  
10 transcript.

11 MR. WAY: I seem to recall that his  
12 reference to bare-earth, and I think we might  
13 have to go back to it, was that topography was  
14 just so flat that it didn't make as much, didn't  
15 have as much value as it could have, and I think  
16 that's what I recall.

17 MS. DUPREY: I don't think I know what you  
18 mean by "have as much value."

19 MR. WAY: May have to do a little searching  
20 here.

21 MR. IACOPINO: I think Mr. Raphael  
22 testified on Day 9.

23 MR. WAY: That was it, yes.

24 MR. IACOPINO: October 15th, 2018. He

1 testified in both the morning and afternoon  
2 session. I suspect you want to look at the  
3 afternoon session first and probably look around  
4 page 14, 15, and there's some discussion. I'm  
5 sorry. Page 82 to 83 there's some discussion  
6 there, but that's for you all to determine what  
7 to discuss.

8 DIR. MUZZEY: I also found another  
9 reference from that last day, and I do apologize  
10 for not being here for this final testimony from  
11 Mr. Raphael, but I did review the transcript,  
12 and I'm looking on page 60 of that transcript  
13 where he talks about, quote, "On the top of page  
14 2 where I walked through the four points of our  
15 analysis, in analyzing the 10-mile viewshed I  
16 used the bare-earth as a starting point to  
17 first, you know, test whether the Project, you  
18 know, the site appeared within that category in  
19 the bare-earth viewshed. So we have it and I  
20 used it for that purpose," end quote. Is that  
21 what you were thinking of?

22 MS. DUPREY: For whatever reason, I recall  
23 him, and I remember feeling surprised that he  
24 would say something like this. I thought he

1 said you could see everything. So I'm going to  
2 go back, I would refer the Committee to  
3 Applicant's Exhibit 52 and I don't have a number  
4 on that. Exhibit 52 is the potential viewshed  
5 for a 10-mile and this other one that I have  
6 which I believe is right nearby in number is the  
7 3-mile potential viewshed map.

8 PRESIDING OFFICER WEATHERSBY: He also goes  
9 into this in the report which is Exhibit 51 on  
10 page 7 starting at the bottom of the second  
11 numbered paragraph, talks about a 10-mile radius  
12 required by our rules and then for this analysis  
13 the area with the greatest potential for visual  
14 impact is determined to be within a 6-mile  
15 corridor running parallel to the Project  
16 centerline, three miles on each side of the  
17 centerline. That determination is based on a  
18 number of precedents and standards for the  
19 visual assessment of transmission projects  
20 established in other projects in New England.  
21 "It is reinforced by the fact that beyond three  
22 miles, visibility and potential for visual  
23 impact from transmission structures diminishes  
24 significantly. Within this 6-mile area of

1 greatest potential impact, all scenic resources  
2 are identified regardless of visibility. Given  
3 the relatively flat topography of the region, as  
4 was as intervening vegetation and structures,  
5 this approach errs on the side of being more  
6 inclusive. Beyond 6 miles and within the  
7 20-mile width of the overall corridor study  
8 area, only resources within the area of  
9 potential visual impact (areas of potential  
10 visibility) are identified and analyzed." And  
11 it's all derived from a computer-based  
12 visibility analysis. If that's helpful.

13 MR. IACOPINO: Would it be helpful if we  
14 had that put up on the screen instead of on the  
15 table? Or not. Not hearing anybody.

16 MR. SHULOCK: Yes. Give us the Exhibit  
17 again?

18 MR. IACOPINO: It's Exhibit 51.

19 MR. SHULOCK: And page.

20 PRESIDING OFFICER WEATHERSBY: Page 7, 8  
21 and then he goes into it again on 11 and 12.

22 MS. DUPREY: Is Exhibit 51 bare-earth?

23 PRESIDING OFFICER WEATHERSBY: 51 is the  
24 report, Visual Impact Report. 52 is Potential

1 Viewshed Map. Topography and vegetation. And  
2 bare-earth was --

3 MS. DUPREY: It's not bare-earth, but when  
4 you read the description on it, it says, "This  
5 viewshed does not account for the screening  
6 effects of buildings, structures, site specific  
7 vegetation, actual tree height and density,  
8 variations in eyesight, and atmospheric and  
9 weather conditions. Not all structures (or  
10 portions of structures) will be visible.  
11 Therefore, the viewshed map will often overstate  
12 potential visibility."

13 So while it's not bare-earth, it's  
14 certainly not with all the screening that  
15 currently exists. I think that's why it looks  
16 like it has more effect than what we've heard  
17 about. I'm looking at, I believe it's  
18 Applicant's 52. I think it's the second page of  
19 Applicant's 52.

20 MR. WAY: I think so. I'm looking at  
21 Applicant's Exhibit 266.

22 MR. IACOPINO: Should be up on the screen  
23 for everybody in just a second. There you go.

24 DIR. MUZZEY: That is different.

1 MR. WAY: Generated from the top of each  
2 structure and accounts for topography only.

3 PRESIDING OFFICER WEATHERSBY: So the  
4 difference, as I understand it, between 266 and  
5 52 is that Exhibit 266 is bare-earth, just the  
6 topography, whereas 52 is both topography and  
7 vegetation.

8 MR. WAY: Which I think goes to my earlier  
9 impression that under a bare-earth scenario,  
10 seen from everywhere. Not particularly useful.

11 DIR. MUZZEY: But to clarify, I believe our  
12 rules request a bare-earth analysis.

13 MR. WAY: It does. It does.

14 MS. DUPREY: Mike, could you speak to that  
15 for a minute, that they do request a bare-earth  
16 analysis, but it's not the only analysis, it's  
17 bare-earth and something, and there's no, as I  
18 recall, statement about how we have to view  
19 particularly the bare-earth. I can't remember  
20 which reg or rule I read it in.

21 MR. IACOPINO: Right. First of all, the  
22 Application was accepted by the Committee. So  
23 there's an implicit determination that it was,  
24 the Application itself in its entirety was

1 complete. With respect to the rule, looking for  
2 it right now --

3 MR. WAY: 301.05(b). "The visual impact  
4 assessment shall contain the following  
5 components . . . bare ground conditions using  
6 topographic screening only and with  
7 consideration of screening by vegetation or  
8 other factors."

9 So the question then comes what do we do  
10 with it from there or is that just that's  
11 submitted. I don't think we mention bare  
12 ground, unless I'm wrong, any other place.

13 PRESIDING OFFICER WEATHERSBY: So we have  
14 the two viewshed models. When LandWorks used  
15 those, he found, Mr. Raphael found that 30  
16 scenic resources had potential visibility of the  
17 Project.

18 MS. DUPREY: With topo and vegetation or in  
19 a bare earth?

20 PRESIDING OFFICER WEATHERSBY: No, the topo  
21 and vegetation. Right. And the 3-D modeling  
22 that he did. Part of that, I think, goes back  
23 to his definition of scenic resources which we  
24 should probably look at.

1 MS. DUPREY: I guess I'm looking at the  
2 10-mile map as reference material. I don't feel  
3 like we have to use that as our standard. I  
4 don't think the regs dictate that we use that as  
5 the standard. I mean the bare earth part.

6 So is the question we're asking ourselves  
7 whether we should be at the 10-mile distance  
8 versus the 6-mile distance?

9 PRESIDING OFFICER WEATHERSBY: I think the  
10 question, before we get to the definition of  
11 scenic resources, backing up a little bit, was  
12 the 10-mile, of course, was dictated by the  
13 rules, and then using all of his modeling and  
14 analysis he came up with this 6-mile area of  
15 potential visual effect so three miles on each  
16 side of the corridor. Do we feel as though that  
17 area was determined correctly?

18 MS. DUPREY: Could someone just tell me as  
19 I look at the 10-mile map where all the space is  
20 white, does that mean it's not visible there?

21 DIR. MUZZEY: Correct.

22 MS. DUPREY: If that's the case, then I  
23 feel like the 3-mile on either side is  
24 appropriate. As I compare both exhibits in 52,

1 it looks right to me.

2 MR. SHULOCK: I'm trying to find in his  
3 analysis, but I think it was not just the 3-mile  
4 area, but it was the 3-mile area plus any areas  
5 within the visual impact, the 10-mile visual  
6 impact area where there was visibility. What  
7 was eliminated were things between 3 and 10  
8 miles where there was no visibility.

9 DIR. MUZZEY: And Counsel for the Public's  
10 Post-Hearing Brief describes it as such as well.  
11 "Mr. Raphael purported to have identified all  
12 scenic resources within a 3-mile radius of the  
13 Project."

14 So that's regardless of whether or not it's  
15 in view of the Project as well as those scenic  
16 resources within a 10-mile radius that were  
17 within the area of potential visual impact based  
18 on Mr. Raphael's viewshed model. So what we  
19 were expecting to get then based on that  
20 methodology in his report were all the scenic  
21 resources within a 3-mile radius of the Project,  
22 regardless of whether or not they could see the  
23 Project, as well as those scenic resources  
24 within 10 miles that could see the Project. So

1           that's the list we're supposed to have in his  
2           analysis.

3           MR. SHULOCK:   So I looked at that as the  
4           first sensible way to start winnowing things  
5           down.   There was no need to identify scenic  
6           resources in the white area when there was no  
7           visual impact on them because you couldn't see  
8           the transmission line from them anyhow based on  
9           topography.

10          MS. DUPREY:   Right.

11          DIR. MUZZEY:   But you're talking from Mile  
12          3 out to 10 at that point.

13          MR. SHULOCK:   Exactly.

14          DIR. MUZZEY:   Thank you.

15          PRESIDING OFFICER WEATHERSBY:   Dave,  
16          correct me if I'm wrong, but tell me, I guess,  
17          is there criticism of that portion?   The  
18          criticism seems to lie with the, not the area  
19          but the identification of what are scenic  
20          resources.

21          MR. SHULOCK:   Having a hard time pointing  
22          to the place in the record, but there were  
23          arguments that he had adopted his own radius in  
24          contravention of our rules.   Our rules require

1           ten, he only implied a three, you know, just  
2           because that's what he wanted to do. That  
3           violated our rules.

4           And I don't think that that, I mean based  
5           on this discussion I don't think that's  
6           accurate. He looked at the 10-mile radius and  
7           anything that was visible within that.

8           MS. DUPREY: Agreed. The submission of the  
9           exhibit as Exhibit 52 was an early submission so  
10          it would indicate that that was what his report  
11          was based on, and when you compare those two  
12          maps that are included in 52, it looks  
13          appropriate to me.

14          PRESIDING OFFICER WEATHERSBY: Just a  
15          reminder for everybody to eat their microphones  
16          and keep their voices as loud as possible so  
17          everything can be heard.

18          So what I'm hearing -- go ahead,  
19          Dr. Muzzey.

20          DIR. MUZZEY: I just, I have a related  
21          question to that discussion of the 3- versus  
22          10-mile treatments. The report that we had as  
23          Applicant's Exhibit 51 dated April 26th appears  
24          to rely on the map in Exhibit 52 which is also

1           dated April of 2016. We know that's a map that  
2           is based on the topography and vegetation. The  
3           later exhibit, 266, is a submission of bare  
4           earth information, and I'm checking for a date  
5           on that.

6           MR. IACOPINO: June 2017.

7           DIR. MUZZEY: That's June 2017. So it  
8           would appear his analysis was not based on bare  
9           earth mapping. And my question is is that  
10          sufficient when our rules do request bare earth  
11          mapping.

12          MS. DUPREY: Our rules request submission  
13          of it. They don't insist that we use that as  
14          our standard. At least, I don't read it that  
15          way.

16          MR. WAY: I tend to agree, and I go back to  
17          my earlier point that "visual impact assessment  
18          shall contain the following component" . . .  
19          "bare ground conditions using topographic  
20          screening."

21          Once again, I'm unclear what one does with  
22          that, and what does it matter. I'm trying to  
23          get a sense of whether it matters if it was done  
24          in June of 2017 versus at the beginning. So it

1 was submitted, and it was included. I'm not  
2 sure how we do anything with it other than that.  
3 And maybe get a sense of how we've used it in  
4 the past for other types for projects.

5 PRESIDING OFFICER WEATHERSBY:

6 Mr. Fitzgerald?

7 MR. FITZGERALD: So Mr. Raphael's Prefiled  
8 Testimony indicates that his VIA analyzes the  
9 visual impact of the Project within the visual  
10 study area that was defined as a 10-mile linear  
11 corridor on other side. He then goes on to say  
12 he determined that the area for the greatest  
13 potential visual impact was within three miles  
14 on each side. Consistent with this  
15 determination he identified all scenic resources  
16 within the three miles. Beyond three miles, he  
17 identified only resources with potential Project  
18 visibility.

19 So it seems clear to me that he considered  
20 10 miles. Whether he was looking at this map,  
21 bare earth or whatever, he made a determination  
22 that the greatest visual impact would be within  
23 three miles, and so he limited it to that, but  
24 did include some items outside of three miles.

1 Beyond three miles he identified only resources  
2 with potential Project visibility. In other  
3 words, he went to those locations and so on and  
4 so on.

5 I guess one other point, I think we could  
6 really delve into this for an awful long time,  
7 but seems if I'm reading the testimony correctly  
8 and recalling it that this resulted in a  
9 difference between the two reports regarding 13  
10 sites of which Mr. Raphael only agreed that two  
11 of those sites had scenic, were scenic resources  
12 and that Mr. Lawrence ultimately agreed.

13 Mr. Raphael criticized the assessment  
14 prepared by the Counsel for the Public  
15 testifying that 13 key observation points  
16 identified by counsel, only two qualify as  
17 scenic resources, and then Mr. Lawrence in his  
18 testimony recognized that the rest of the  
19 observation points identified and evaluated by  
20 him are not scenic resources.

21 So I guess the question in my mind is how  
22 much further do we go down this rabbit hole. It  
23 seems that ultimately they don't have a strong  
24 disagreement, and there was only, it only

1           resulted in two sites. And I think that what I  
2           just read says that he did consider the 10 miles  
3           and then he narrowed it down to three because.  
4           So it seems to me he followed the rules, the  
5           bare earth thing. I think we can, you know,  
6           debate a little bit or whatever, but I guess my  
7           overall impression is that while there were  
8           criticisms and differences of opinion on  
9           approach and so on, ultimately there was not a  
10          significant difference, and I believe I  
11          remembered reading in Mr. Lawrence's report that  
12          at some point he stated that he generally agreed  
13          with Mr. Raphael's overall conclusions. I think  
14          I can find that. I was just looking at it,  
15          but --

16                 MR. SCHMIDT: They did say that he agreed  
17                 with the exception of the road crossings, and I  
18                 think we can get beyond the road crossings, and  
19                 I also think that the bare earth submission was  
20                 all that was required.

21                 MR. SHULOCK: That's Counsel for the Public  
22                 Exhibit 4A.

23                 MR. FITZGERALD: Yes.

24                 MR. SHULOCK: Page 9.

1           MR. FITZGERALD: Just trying to find the  
2 page.

3           MR. SHULOCK: Electronic page 9.

4           MR. FITZGERALD: I'm getting there.

5           MR. WAY: What page was that again?

6           MR. SHULOCK: I'm not there, but I believe  
7 it's Exhibit 4A.

8           MR. FITZGERALD: Page 4 of Mr. Lawrence's  
9 report says I found that the height of the  
10 proposed poles generally within five to 10 miles  
11 of the trees on either side and the rolling hill  
12 topography between the Project and 8 of the 9  
13 sensitive scenic resources generally confirms  
14 the LW report's Statement 3 on page 95 and it  
15 quotes that statement. "Lack of overall  
16 visibility. Typical Project visibility is  
17 limited to crossing points on local roads and  
18 state highways, a few open areas (some in  
19 parking lots) and a short section at the UNH  
20 campus. Visibility is limited due to the  
21 extensive tree cover and woody landscapes in  
22 many sections, with tree heights typically 55 to  
23 65 feet."

24           So my reading is that there was not,

1           although there was criticisms of methodology and  
2           a little professional back and forth, there  
3           wasn't a significant difference in the ultimate  
4           conclusions.

5           MR. SHULOCK:   So that does bring up  
6           something for me, and one of the things that I  
7           find significant for our review is that we  
8           really have only two experts on visual impacts  
9           and aesthetics, and they generally agreed with  
10          one another for most of the route of the  
11          Project, right?

12          MR. FITZGERALD:   Right.

13          MR. SHULOCK:   And other people can be  
14          reasonable, but I give a little bit more weight  
15          to a more professional practice review of the  
16          entire Project than to those individual  
17          reactions to some of the aesthetic issues.   So I  
18          find that very important to my weighing of the  
19          evidence that the experts essentially agree.

20          MR. FITZGERALD:   And I guess I will also  
21          say that when I first listened to Mr. Raphael I  
22          was pretty impressed with the thoroughness of  
23          his methodology, you know, the approach; and as  
24          he testified, I went back and read his approach,

1 and when I looked further at the Lawrence report  
2 and testimony, his criticism was that Mr.  
3 Raphael's was too detailed, too prescriptive.  
4 I'm not sure of the right word, you know, but to  
5 me a logical methodology makes sense.

6 When I went back to look at Mr. Raphael's  
7 report to see kind of what his methodology was,  
8 I read it and I characterized it in my own mind  
9 as well, I took a camera and went out and took a  
10 look and this is what I saw. I don't mean to  
11 demean that. I just, there was certainly a  
12 significant contrast in my mind to the  
13 thoroughness, and, you know, the methodological  
14 approach. Is that the right word?

15 MR. IACOPINO: Mr. Fitzgerald, you just  
16 indicated that when you looked at Mr. Raphael's  
17 report, that was your impression. Did you mean  
18 to say Mr. Lawrence?

19 MR. FITZGERALD: Yes. I'm sorry. Yes.  
20 That, you know, he didn't describe much of an  
21 approach. So --

22 PRESIDING OFFICER WEATHERSBY: Just to  
23 clarify, Mr. Lawrence was not charged with doing  
24 visual impact assessment or rather reviewing Mr.

1 Raphael's. But that said, sounds like as far as  
2 the visibility piece, the area of potential  
3 impact we feel as though this, despite there  
4 being some criticism mostly from Intervenors,  
5 not from Counsel for the Public, that I'm  
6 sensing an agreement that we feel as though that  
7 area of potential visibility has been correctly  
8 determined. Am I mistaken in that thinking?

9 MS. DUPREY: I'm not sure that the Counsel  
10 for the Public agrees with that as I think I was  
11 just reading sections of his brief again. I  
12 think that what he said at the end is that the  
13 mitigation is going to alleviate the impact that  
14 he feels that's there. I definitely I don't  
15 gather from reading his brief that he's in the  
16 same place that we seem to be coming to on this.

17 And I would differ with Counsel for the  
18 Public with respect to the requirements of what  
19 301.05(b)(1) requires to be submitted to us.  
20 He's more specific than I feel like the rule  
21 says. So I'm glad that in the end we would get  
22 to the same place, but I don't think we took the  
23 same path to get there.

24 PRESIDING OFFICER WEATHERSBY: So my

1 question wasn't concerning the impact on any  
2 particular properties and whether mitigation is  
3 addressing those or -- we're not close to that  
4 sort of a conclusion yet. I was trying to take  
5 a baby step and see if we were on the same page  
6 with the identification of the area of potential  
7 visual effect being the 3-mile either side of  
8 the corridor plus those other properties that  
9 were identified as having effect outside of the  
10 corridor. Do we feel as though the area of  
11 visibility was correctly determined?

12 MS. DUPREY: I do.

13 PRESIDING OFFICER WEATHERSBY: Is there  
14 anyone who feels differently, that it was not  
15 correctly determined?

16 (No verbal response)

17 PRESIDING OFFICER WEATHERSBY: So given  
18 that, maybe we'll move on then to the definition  
19 of scenic resources.

20 MS. DUPREY: Could I just say that I'd like  
21 it to be in the record that the reason that we  
22 feel like it was correctly determined is based  
23 on, unless it isn't for other people, Exhibit 52  
24 demonstrating what was in the analysis. At

1 least it is for me.

2 PRESIDING OFFICER WEATHERSBY: Why don't we  
3 turn then to the definition of scenic resources  
4 and see if we feel as though the types of  
5 resources were all captured by Mr. Raphael.  
6 That's the definition in our rules.

7 Mr. Shulock, can you tell us about it?

8 MR. SHULOCK: Okay. So the first type of  
9 scenic resource is one designated pursuant to  
10 applicable statutory authority by national,  
11 state or municipal authorities for their scenic  
12 quality.

13 MS. DUPREY: Do you have a rule reference?

14 MR. SHULOCK: That's Site 102.45.

15 PRESIDING OFFICER WEATHERSBY: So Dave, do  
16 you take by that to be things like designated  
17 scenic roads, historic properties with a  
18 scenic -- actually, that comes later, I guess.  
19 Special category.

20 MR. SHULOCK: Why don't we go through them  
21 all. So the second one is conservation lands or  
22 easement areas that possess scenic quality.

23 Third is lakes, ponds, rivers, parks,  
24 scenic drives and rides, and other tourism

1 destinations that possess a scenic quality. So  
2 I think those rides would fall under that  
3 definition.

4 Recreational trails, parks, or areas  
5 established, protected or maintained in whole or  
6 in part with public funds.

7 Historic sites that possess a scenic  
8 quality; or

9 Town and village centers that possess a  
10 scenic quality.

11 And I think the criticisms that we heard  
12 were that he didn't reach out to local  
13 communities to find out what historic sites they  
14 might be interested in. That he gave sort of  
15 short shrift to town designation of scenic roads  
16 and drives, and that he did not identify  
17 recreational trails, parks, et cetera, in some  
18 instances.

19 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

20 MS. DUPREY: Can we infer that with respect  
21 to subpart (d) that it's due to scenic quality  
22 for those items? It doesn't say it, but every  
23 other segment of the rule does.

24 PRESIDING OFFICER WEATHERSBY: Mr.

1 Iacopino, do you have any thoughts on that?

2 MR. IACOPINO: I would suggest that the  
3 fact that it doesn't have it is that the  
4 drafters specifically left it out. That would  
5 be my interpretation of it. It certainly has to  
6 be a place that there's a legal right of access  
7 to, and they have to be protected or maintained  
8 in whole or in part with public funds, but I  
9 think the recreational trails, parks or areas  
10 established are part of the rule, and they're  
11 not limited by scenic quality.

12 MR. FITZGERALD: I would tend to agree with  
13 that interpretation, especially since (e) and  
14 (f) immediately follow that both do say with the  
15 scenic quality. It would seem that if they  
16 intended to say that they would have said it for  
17 (d) also.

18 MS. DUPREY: But it's a definition of  
19 scenic resources and just by virtue of being a  
20 recreational space you're not scenic. I think  
21 it makes a significant difference. So I guess  
22 for my part I'm going to interpret that it's  
23 supposed to be scenic and not just every one of  
24 them.

1 MR. FITZGERALD: Can I suggest there's a  
2 difference between scenic resources and having a  
3 scenic quality?

4 PRESIDING OFFICER WEATHERSBY: Yes.

5 MR. FITZGERALD: Scenic resources is a  
6 larger universe, and then --

7 MS. DUPREY: Yes, but it's scenic.  
8 Modifying word.

9 MR. FITZGERALD: Are you trying to impose  
10 some common sense and logic on this process?

11 I think this describes the universe of  
12 stuff to be considered, and then you determine  
13 whether there's a scenic quality to it. I don't  
14 know.

15 PRESIDING OFFICER WEATHERSBY: I think if  
16 the public sponsored, raised money or used  
17 public funds in some manner to protect or create  
18 a recreational trail or park or other area that  
19 it could have a -- I mean, how could a trail  
20 not, even a trail through dense forest has some  
21 scenic quality.

22 MS. DUPREY: That's true for conservation  
23 lands and village centers. I mean, all of that  
24 was developed with public funds. Doesn't seem

1           that different to me particularly.

2           PRESIDING OFFICER WEATHERSBY: Director  
3 Muzzey?

4           DIR. MUZZEY: I would always err on using  
5 the rules as written for this particular case.  
6 I think it does all participants in the process  
7 a favor by applying the rules as they are  
8 written today in their plain language meaning.  
9 It is interesting that that section (d) here  
10 doesn't have that qualifier, but I'm not sure we  
11 should add meaning to the rules where it may not  
12 make sense to us personally. So I will be  
13 considering section (d), recreational trails,  
14 parks, et cetera, as it is written today.

15           I did want to say just in general my  
16 opinions that Mr. Raphael's interpretation of  
17 what a scenic resource is was different than my  
18 own, and I did talk with him or question him  
19 about that at the time of his testimony. I felt  
20 that his approach to defining what a scenic  
21 resource was may not have been very responsive  
22 to our Project area as it exists today, as it's  
23 developed over hundreds of years.

24           His use of guidance from the BLM, the

1 Bureau of Land Management, as well as the  
2 National Forest Service in my opinion seemed to  
3 have a western slant where we would have large  
4 expanses of undeveloped areas, potentially with  
5 high natural resource scenic qualities, and what  
6 we are dealing with in the current Project area  
7 has not had that developmental pattern at all.

8 More so, I see that the rules defining  
9 scenic resources for SEC proceedings do include  
10 a dose of what we would consider more cultural  
11 resources that possess a scenic quality, whether  
12 that's a town or village center, a tourism  
13 destination or a historic site that might  
14 possess scenic quality. I felt that his  
15 interpretation assumed these things were  
16 intrusions rather than potential scenic  
17 resources in their own right.

18 So I found his approach unresponsive to  
19 really the Project and the Project area at hand,  
20 and it was, therefore, a little difficult to  
21 apply to this Project.

22 PRESIDING OFFICER WEATHERSBY: I guess I  
23 found it useful to look at his Visual Impact  
24 Analysis, Exhibit 51, where he lists the scenic

1 resources, Table 2, where he goes through the  
2 various categories of scenic resources within  
3 the area of greatest potential visual impact.

4 MR. WAY: What page are you on?

5 PRESIDING OFFICER WEATHERSBY: I'm on PDF  
6 51. Page 45 it begins of his report. That's  
7 PDF 51. Applicant's Exhibit 51. I'm not going  
8 to get into all the specifics in there, but it  
9 starts out with historic sites, heritage areas,  
10 historic landmarks, national landmarks, national  
11 scenic byways, scenic trails, wild and scenic  
12 rivers, wildlife refuges, National Park Service  
13 affiliations.

14 And then the state resources on page, next  
15 page 52, state parks, state-conserved lands,  
16 nonmotorized trails, covered bridges, Department  
17 of Transportation scenic and cultural byways,  
18 overlooks, fire towers, rivers, public waters,  
19 scenic drives, goes on and on. PDF 54 goes into  
20 scenic vistas, viewshed resources. And 55,  
21 covered bridges, nonmotorized trails and  
22 conserved lands.

23 MR. SHULOCK: When you get down to 95,  
24 right above that is a title for nonmotorized

1 trails in conserved or public lands.

2 PRESIDING OFFICER WEATHERSBY: Keeps going  
3 on PDF 56, public parks and recreational  
4 gathering areas.

5 MR. FITZGERALD: I'm sorry. What document  
6 are you looking at?

7 PRESIDING OFFICER WEATHERSBY: Applicant's  
8 Exhibit 51. The Visual Impact Analysis. PDF, I  
9 forget where it started. But I'm on 56, 57 now.  
10 PDF 57 has conserved lands for specific public  
11 use or public resource component. Table 3 goes  
12 on and addresses the ones beyond three miles so  
13 the 3- to 10-mile area. So I think it's not  
14 that he didn't include them. I think that the  
15 problem people have is that if it generally had  
16 no visibility, then somehow given their weight  
17 they should be more further analyzed.

18 DIR. MUZZEY: Well, if we go back to his 10  
19 versus 3-mile methodology, I had thought he was  
20 identifying all scenic resources within the  
21 3-mile area regardless of whether they were  
22 visible. It was between miles 3 and 10 that he  
23 was only identifying scenic resources if they  
24 had visibility of the Project.

1 MR. FITZGERALD: I agree with that. I  
2 think that's what the testimony says.

3 DIR. MUZZEY: So we're to take Table 2 then  
4 as all of the scenic resources within that  
5 3-mile area regardless of whether or not they  
6 have visibility, and then within the chart  
7 itself, once he's assembled that large list of  
8 scenic resources, he notes whether or not they  
9 have visibility and he highlighted items on the  
10 list that have visibility, and he gives the  
11 mileage and potential number of structures  
12 visible.

13 MS. DUPREY: Are the things beyond the  
14 three miles in that list as well as the visible?

15 PRESIDING OFFICER WEATHERSBY: Table 3?  
16 Goes into beyond.

17 MS. DUPREY: Table 3. Okay, thanks.

18 PRESIDING OFFICER WEATHERSBY: The other  
19 thing on Table 3 is the fire tower. Or wait.  
20 I'm sorry. There's those three. Garrison Hill  
21 Park and Tower, Great Bay Natural Estuarine  
22 Resource Reserve and Stratham Hill Fire Tower,  
23 and those are the three, Dave, that he  
24 specifically identified elsewhere as well --

1 MR. SHULOCK: Right.

2 PRESIDING OFFICER WEATHERSBY: -- as being  
3 outside the 3-mile but having visibility and  
4 being significant.

5 So then go back to the definition as to  
6 whether he adequately identifies scenic  
7 resources that Site Rule 102.45, do folks -- go  
8 ahead, Dave.

9 MR. SHULOCK: I think I'm satisfied with  
10 what we've looked at for everything except for  
11 historic sites that possess a scenic quality  
12 because there were some separate arguments about  
13 that. So I don't know how everybody else feels.

14 DIR. MUZZEY: I felt that there's a great  
15 deal of confusion about this topic as well, and  
16 perhaps others on the Subcommittee can help me  
17 if you could find a clear statement of where Mr.  
18 Raphael gathered his information and the  
19 methodology he applied in order to determine  
20 whether or not historic site had scenic  
21 qualities. He stated that he worked with the  
22 historic consultants on the Project team, and we  
23 had a great deal of email back and forth and  
24 lists with little interpretation or little

1 addressed in his testimony as to the meaning  
2 beyond all of that. I didn't find a clear  
3 statement of either of those, either his source  
4 for the list of all historic sites or his  
5 methodology for determining what the scenic  
6 quality was.

7 This gets back to a comment I believe I  
8 made earlier in the morning in that I do have  
9 concerns about the integration of the different  
10 consultant findings. We know from the  
11 historical consultants that this Project travels  
12 through 7 historic districts, and we know that  
13 the historical consultants winnowed through the  
14 historic properties that they found and focused  
15 on historic properties where setting, landscape  
16 and feeling were important historical  
17 attributes.

18 The more obvious path I would have found is  
19 to use those properties and include them in  
20 Table 2 so they could go through Mr. Raphael's  
21 further winnowing process. But we know that  
22 they, outside of the Newington Center Historic  
23 District, those historic sites are not  
24 considered.

1           We also heard evidence from the Durham  
2 Historic Association that they also had  
3 historical places that they felt were locally  
4 important as well that were not part of the  
5 historical consultant team's analysis, and they  
6 were also concerned about the aesthetic impact  
7 of the Project on those resources as well.

8           MR. SHULOCK: I guess my confusion about  
9 Mr. Raphael's testimony on the last day of  
10 hearing, the supplemental day of hearing was not  
11 so much this source but the timing, right?  
12 Because as I understood his testimony he had  
13 evaluated the historic sites in accordance with  
14 his criteria. They just didn't appear as listed  
15 in his original report. Maybe I just have a  
16 complete misunderstanding of that testimony.  
17 But that's what I took as the import of it, and  
18 I might have to go back and read that again.

19           MR. FITZGERALD: I asked him to clarify  
20 that, and that was my understanding as well.

21           PRESIDING OFFICER WEATHERSBY: Could you  
22 please repeat your understanding? So I can  
23 understand your understanding?

24           MR. FITZGERALD: That he had, his testimony

1 on the last day was that nothing new or, there  
2 was no new information presented. He was just  
3 clarifying, one, a mistake that he had made, and  
4 two, an error of omission in the report as I  
5 remember it. I'd have to go back and look. But  
6 it didn't change any of his conclusions or have  
7 any -- it had just arisen as a result of  
8 questioning, and he made a misstatement during  
9 his cross-examination, I believe, but I think  
10 there were two or three of us at least that  
11 attempted to try to clarify that, and I think I  
12 had the third attempt at it on that day, and I  
13 just clearly asked him. Does your testimony  
14 today provide any new information or change any  
15 information that was previously presented or  
16 does it just clarify, and he answered that it  
17 just clarified.

18 DIR. MUZZEY: So I have read the transcript  
19 as well and recall what you're describing as  
20 well. So my question then becomes if he had  
21 considered all of the historic sites with scenic  
22 quality within the 3-mile Project area, why is  
23 the Newington Center Historic District the only  
24 one listed on Table 2?

1 MR. SHULOCK: I don't think we asked him  
2 that question.

3 MS. DUPREY: Do you mean like why wasn't  
4 Durham listed?

5 DIR. MUZZEY: Why wasn't what?

6 MS. DUPREY: Durham listed?

7 DIR. MUZZEY: I'm not sure what the mileage  
8 is to the Durham Historic District.

9 MS. DUPREY: Well, it's got to be very  
10 close. Close to the downtown, it certainly is.

11 DIR. MUZZEY: Well, as well as the historic  
12 sites that the Project's architectural  
13 historians identify as well. And again, I'm not  
14 certain that this makes a difference in the end  
15 because that analysis was not done, but that is,  
16 that's the question the record left with me, and  
17 so I'm just wondering if anyone else on the  
18 Subcommittee has that question or whether they  
19 have something that they feel would answer that.

20 PRESIDING OFFICER WEATHERSBY: I think he  
21 did, he testified that last day when he got  
22 called back that he had done that analysis  
23 before. He just didn't include it, and now he  
24 was adding it. Looking back at my notes, he

1 gave it a new review and double-check with  
2 desktop analysis, wanted to add to the record,  
3 now included eligible properties in state and  
4 federal Registers. That he had looked at them  
5 before.

6 But I can't answer your question because if  
7 he had looked at it before, why is it only the  
8 Historic District, Newington Historic District.  
9 Actually, the Stratham Fire Tower is on there.  
10 That's a historic property beyond the three  
11 miles. There may be one other. My  
12 understanding, too, is that properties that he  
13 reviewed for his analysis, if I recall right, it  
14 was a list that was given to him by Preservation  
15 Company, and he didn't second guess that list or  
16 do any independent analysis of that list. They  
17 used that information from his expert on  
18 historic sites.

19 MR. FITZGERALD: Isn't that the list in  
20 Exhibit 265?

21 DIR. MUZZEY: This is a long list with tiny  
22 print. I focused on the Town of Durham, and we  
23 have three items, Morrill Hall - UNH, Oyster  
24 River Dam, and the Highland House also known as

1 the Thompson Inn. So thinking again of the list  
2 of historic sites that the consultant for this  
3 Project assembled, there are additional Durham  
4 properties. There is, I should have this  
5 memorized. Give me a minute and I'll find the  
6 list.

7 There's the Durham Point Historic District.  
8 There's the Little Bay Underwater Cable Terminal  
9 Houses Historic District which spans Durham and  
10 Newington. There's the Newmarket and Bennett  
11 Farms Historic District in Durham, and then  
12 there's the University of New Hampshire Historic  
13 District in Durham. We do have one property,  
14 Morrill Hall, noted from the University of New  
15 Hampshire, but we also know that the University  
16 of New Hampshire Historic District is far larger  
17 and includes hundreds and hundreds of buildings  
18 rather than just one.

19 MR. FITZGERALD: So looking at this Exhibit  
20 265, the email string above the table, there's  
21 an email from Mark Doperalski saying Tanya, I'm  
22 looking to acquire a list of all properties and  
23 districts determined eligible for the NR and/or  
24 SR and the associated addresses.

1           So is that distinction of determined  
2           eligible for NR or SR?

3           DIR. MUZZEY: You'll note that the staff  
4           person from the Division of Historical Resources  
5           attached the list and then instructions to  
6           search two other places for areas and the  
7           complete list of NR or National Register listed  
8           properties was a complete listing. So the  
9           attached list was not the only place the  
10          Applicant was to search to come up with the  
11          properties.

12          PRESIDING OFFICER WEATHERSBY: I'm  
13          wondering if it's just separated, being done  
14          under different names. There's a number of,  
15          there's an analysis of view from Bennett Road or  
16          Durham Point. There are a number of resources  
17          identified as parts of the UNH campus that are  
18          on the list in the Visual Assessment. So I'm  
19          wondering if they're in there; they're just  
20          going by different names.

21          MR. WAY: Are you on 51? Exhibit 51?

22          PRESIDING OFFICER WEATHERSBY: Exhibit 51.

23          DIR. MUZZEY: As I recall, that was even  
24          discussed during the hearing section that that,

1 I'm not certain who was testifying, but they  
2 spoke of by chance some of the views that Mr.  
3 Raphael considered were part of historic  
4 districts but that seemed to have happened  
5 rather from an intentional process but just an  
6 overlap within the Project area.

7 For instance, the focus on Morrill Hall,  
8 you could say well, that considers at least that  
9 part of the UNH Historic District, but that was  
10 just coincidental, and that he didn't consider  
11 the University of New Hampshire District as a  
12 whole and looked to where scenic locations may  
13 be important to the District.

14 Similarly, we heard from the, again, from  
15 the Durham Historic Association, he may have  
16 taken certain places and either the Bennett Road  
17 Historic District or the Durham Point Historic  
18 District, but that again, that was characterized  
19 as coincidental and not encompassing the entire  
20 district and in particular, some of the trails  
21 and the public access afforded by trails  
22 provided.

23 PRESIDING OFFICER WEATHERSBY: Director  
24 Muzzey, is it better to take -- here you have an

1 analysis of, you know, say, ten different spots  
2 in the UNH campus that are listed. Is it better  
3 to break things out into their components and  
4 see if there's an impact? Or just to say here's  
5 the District, and let's take a key observation  
6 point in the District and see if there's an  
7 impact. Are we getting more information the way  
8 it was done or less?

9 DIR. MUZZEY: I think it would have been a  
10 far more straightforward analysis if the  
11 consultant had listed the identified historic  
12 sites from the Project area within Table 2, and  
13 then, again, provided some sort of methodology  
14 and then resulting analysis of whether those  
15 historic sites had scenic qualities and then  
16 where he went within those districts in order to  
17 draw his conclusions.

18 It's very difficult looking at this long  
19 list in particular of local resources that he  
20 categorizes to try to line them up with the  
21 Historic District map and understand whether or  
22 not they are in or out of the Historic District  
23 and why they were chosen. I mean, the vast  
24 majority of these local resources, things that

1 begin on 25 and go through 94, well, actually  
2 then continue on, the vast majority have no  
3 Project visibility which, you know, ideally is a  
4 good thing from a scenic perspective. It's just  
5 very difficult to know from the way the  
6 information is presented as to where we are  
7 within the Historic District.

8 MR. SHULOCK: So I think he explains his  
9 methodology in the Addendum that was attached to  
10 the Applicant's Motion to Reopen the Record. I  
11 don't know what Exhibit Number that is. It  
12 looks like you have that right in front of you.  
13 Is that it? So he describes what Preservation  
14 Works did to winnow down the number of sites to  
15 look at. I don't know if that's what you're  
16 looking for or not when you're looking for how  
17 do we get from here to there, but I think he  
18 clearly said that he had not listed these things  
19 previously, although he had done analysis and  
20 updated the analysis to make sure. I just  
21 wanted to clarify, and just wanted to clarify  
22 for everybody that it had been done. I don't  
23 know if that is sensible or not, but that's what  
24 we have.

1           DIR. MUZZEY: I did review the Addendum and  
2 I do appreciate his additional efforts and his  
3 additional information, but he's not addressed  
4 the Historic Districts that the Project goes  
5 directly through.

6           MR. FITZGERALD: Can I bring one more  
7 piece? Exhibit 263, and I'm not sure where this  
8 came, Applicant's Exhibit 263, is titled  
9 Resources Listed in National Register with  
10 Visibility. And then it has a list of towns in  
11 the 20-mile wide corridor, and it listed Durham  
12 with four National Register, one, I assume this  
13 is what it is, one State Register, SR, and then  
14 if you go down to Durham, you'll see the Durham  
15 Historic District is one of the listed items.

16          DIR. MUZZEY: And I believe that the Durham  
17 Historic District on this list is what Ms.  
18 Duprey may have mentioned before. That's the  
19 downtown Durham Historic District. The  
20 districts I was referring to are the ones that  
21 the Applicant identified for this Project and  
22 that the Project goes directly through. And  
23 that's the Durham Point Historic District,  
24 the -- lost my list again. The Bennett Road.

1 Cable Houses. Western Division of the Boston  
2 and Maine Railroad, et cetera.

3 PRESIDING OFFICER WEATHERSBY: Does seem to  
4 be all over the place because they do talk about  
5 the train station in the narrative but the train  
6 station is not listed, the UNH train station. I  
7 guess you can't just go one place, and it's kind  
8 of frustrating.

9 MR. SHULOCK: So in Footnote 2 says only  
10 two Historic Districts were identified as  
11 resources with potential visibility. Fox Point  
12 in Newington and Wiswell Falls in Durham. Both  
13 locations were considered in the VA. And again  
14 I don't know if that's a satisfying answer to  
15 you. But it talks about the Historic Districts  
16 with potential visibility.

17 DIR. MUZZEY: So fully reading Footnote 2  
18 and this is on page 1, correct? The Applicant  
19 also ascertained from DHR records additional  
20 sites that have been determined eligible since  
21 July 11th, 2018. So this is very new  
22 information, long after the Application was  
23 submitted and even after it was amended. And so  
24 there were two more. Fox Point in Newington and

1 Wiswell Falls in Durham. And they have been  
2 considered.

3 PRESIDING OFFICER WEATHERSBY: So I'm just  
4 going to call folks' attention to the  
5 Applicant's Brief, page 54.

6 MR. FITZGERALD: Applicant's what?

7 PRESIDING OFFICER WEATHERSBY: Applicant's  
8 Post-Hearing Brief. Top of page 54. Says  
9 during cross-examination of Mr. Raphael on the  
10 addendum that we've been talking about, Counsel  
11 for the Public asked Mr. Raphael whether he  
12 assessed the UNH Historic District, Durham Point  
13 Historic District, Newmarket and Bennett Farms  
14 Historic District, and it goes on to say the  
15 record clearly shows that each of these were  
16 considered as part of the VA, and it lists the  
17 sites where it was, these were assessed. If  
18 that's helpful. I haven't gone through each of  
19 those sites. But there's references in the  
20 record for where at least those three Historic  
21 Districts were addressed.

22 MS. DUPREY: What page are you on in the  
23 brief?

24 PRESIDING OFFICER WEATHERSBY: Page 54.

1 Regular page 54, PDF 58 of the Applicant's  
2 Brief. It also goes on to allege that the  
3 record demonstrates that neither the Intervenors  
4 or Counsel for the Public has identified a  
5 single existing resource that LandWorks should  
6 have assessed and was missed. Footnote refers  
7 to a question of Committee Member Way where  
8 Mr. Lawrence recounted that he was comfortable  
9 with Mr. Raphael's assessment of scenic  
10 resources including historic sites.

11 I think what we'll do is take a short break  
12 and people can look through the record to see if  
13 there's anything that they want to look at. And  
14 then when folks are ready we'll come back and  
15 talk about this some more.

16 (Recess taken 2:41 - 2:53 p.m.)

17 PRESIDING OFFICER WEATHERSBY: Okay. We'll  
18 resume. What are people's feelings regarding  
19 identification of scenic resources. Mr. Way?

20 MR. WAY: I guess first going back to the  
21 last 20 minutes or so with discussion with  
22 regards to the District, you know, I feel fairly  
23 comfortable that there were, they were  
24 considered. The Applicant's Brief I think is

1 helpful to summarize that. Do I think it was  
2 neat and clean? No. There was a little bit of  
3 making sausage here. So I think it was  
4 convoluted, but I do believe that it was in  
5 there. I think overall the assessment was done,  
6 as I think someone said earlier, logically. I'd  
7 be interested in Director Muzzey's input to see  
8 what you think about the District piece at this  
9 point.

10 PRESIDING OFFICER WEATHERSBY: Director  
11 Muzzey?

12 DIR. MUZZEY: Well, I believe as I said  
13 earlier, we heard from several people during the  
14 proceeding that views within the District may  
15 have been taken and considered, but they seemed  
16 coincidental rather than a thoughtful approach  
17 that considered the Historic Districts as a  
18 whole and as a scenic resource. So I would not  
19 have said so in that manner, but I can see your  
20 analogy with sausage and appreciate that.  
21 Little humor at the end of the day.

22 So again, I repeat what I said earlier that  
23 it appears that some of the views listed are  
24 within the Historic District. It would take

1 someone skilled with Google mapping and  
2 everything to relate it back to it was some of  
3 the Historic Districts, but that information  
4 does seem to be here.

5 The other interesting thing is that I  
6 believe we also heard testimony during the  
7 proceed that a majority of the line in Durham is  
8 within a Historic District and so it would  
9 probably be difficult to take representative  
10 views and not have landed in one of the  
11 identified Districts for this Project.

12 PRESIDING OFFICER WEATHERSBY: Anyone else?  
13 Ms. Duprey?

14 MS. DUPREY: Yes. I also found the  
15 Applicant's Brief helpful in understanding this  
16 and particularly footnotes 56 through 59 getting  
17 things on the record. I felt that those  
18 footnotes supported the proposition that Chris  
19 was citing earlier. Thank you.

20 PRESIDING OFFICER WEATHERSBY:  
21 Mr. Fitzgerald?

22 MR. FITZGERALD: If I could ask a question  
23 of Director Muzzey.

24 The term "historic sites" is defined under

1 SEC rules as it is in the statute. The statute  
2 uses the term historic property, any building,  
3 structure, object, district, area or site that  
4 is significant in history, et cetera, et cetera,  
5 et cetera. But then Site 102.03 rule says it  
6 includes any prehistoric or historic district  
7 site, building, structure or object included in  
8 or eligible for inclusion in the National  
9 Register of Historic Places.

10 So does eligible for or included in the  
11 National Register, is that a criteria to be a  
12 historic site or are there historic sites that  
13 are not, that are outside that? I'm just a  
14 little bit confused between those two.

15 DIR. MUZZEY: Could probably write a thesis  
16 on that question, Mr. Fitzgerald.

17 MR. FITZGERALD: Just a brief.

18 DIR. MUZZEY: There are many different ways  
19 that historic property, historic site, historic  
20 resource can be identified. Local communities  
21 may have one way of determining what a historic  
22 site is. Different programs may have different  
23 considerations. That's why it was important for  
24 within the rules of the SEC to specify what

1 historic site means for SEC purposes and so  
2 that's why you have the rule written as you do,  
3 as it is.

4 MR. FITZGERALD: I guess what I'm trying to  
5 determine is inclusion on the State Register, is  
6 that, is that all inclusive? Or is there a  
7 universe of -- I'm talking about specifically  
8 for the purposes of our consideration today, the  
9 SEC, what we would consider historic site.  
10 Because it seems clear to me that the VA sort of  
11 limited, I believe, limited themselves to  
12 historic sites eligible for listing on the  
13 Register.

14 DIR. MUZZEY: Listing on the National  
15 Register.

16 MR. FITZGERALD: Yes.

17 DIR MUZZEY: Eligible or listed on the  
18 National Register.

19 MR. FITZGERALD: Right.

20 DIR. MUZZEY: I would agree with that.  
21 That's how the VA has defined historic site.

22 MR. FITZGERALD: I guess I'm asking your or  
23 others' opinions on whether that comports with  
24 our rule.

1 DIR. MUZZEY: I believe it did.

2 MR. FITZGERALD: Thank you.

3 PRESIDING OFFICER WEATHERSBY: Do I tread  
4 in here or not? I don't think there's much  
5 disagreement that the definition of historic  
6 sites in our Rule 102.23 is broader than the  
7 historic sites that are eligible for or listed  
8 in the National or State Historic Register. I  
9 think that, I think there's some agreement that  
10 the definition is broader than that. As relates  
11 to the Visual Impact Analysis they did go more  
12 of a historic register approach, but my feeling  
13 is they also caught anything if there was  
14 anything outside of that in all the many other  
15 categories of scenic resources listed in 102.45  
16 which are, you know, resources designated by the  
17 community, conservation lands, trails, et  
18 cetera, et cetera. If that helps.

19 So I'm getting a sense that people feel as  
20 though the scenic resources identified by the  
21 Applicant's expert was at least adequate for our  
22 purposes. Does anyone disagree with that  
23 statement or would like to comment on that  
24 statement?

1           MR. SHULOCK: I think it's supplemented by  
2 Mr. Lawrence.

3           PRESIDING OFFICER WEATHERSBY: I'm sorry.  
4 Say that again?

5           MR. SHULOCK: As supplemented by  
6 Mr. Lawrence, yes.

7           PRESIDING OFFICER WEATHERSBY: As  
8 supplemented by Mr. Lawrence.

9           MR. SCHMIDT: I agree, especially with the  
10 agreement between Counsel for the Public and the  
11 Applicant as far as mitigation measures. I  
12 think it covers it.

13           PRESIDING OFFICER WEATHERSBY: Without  
14 getting to mitigation yet, just identification  
15 of resources, people feel as though what was  
16 done by the Applicant and supplemented by  
17 Counsel for the Public expert is adequate for  
18 our purposes.

19           MS. DUPREY: I just wanted to expand my  
20 footnotes from what I said before to 55 through  
21 63 in the Applicant's Brief.

22           PRESIDING OFFICER WEATHERSBY: Mr. Way?  
23 Are you going to say something?

24           MR. WAY: I was going to agree for the

1 purpose of indication this is adequate.

2 MR. SHULOCK: Are we going to discuss any  
3 requirement that we looked at scenic resources  
4 that are private property in current use?

5 PRESIDING OFFICER WEATHERSBY: Yes. We  
6 didn't do that, did we. We should talk about  
7 that briefly. Would you like to do that?

8 MR. SHULOCK: Sure. That was an issue  
9 raised by, I believe, Newington that to  
10 adequately identify scenic resources we should  
11 look at current use properties because they're a  
12 tax break for the right for the public to use  
13 the land for certain purposes. Right? And I  
14 don't think we've ever done that before. I  
15 don't think we normally look at private property  
16 as a scenic resource. I would say that we don't  
17 have to look at those. Anybody else have a  
18 point of view on those?

19 MR. WAY: I don't think we've taken that  
20 position in previous cases. I think the current  
21 use issue has been brought up, and I don't think  
22 we adopted that position with regards to the  
23 visuals, and I think that's probably still a  
24 wise position to take.

1 MR. FITZGERALD: Is the argument that these  
2 fall under 301.14(d), recreational trails, parks  
3 or areas established, protected or maintained in  
4 whole or in part with public funds? Is that the  
5 same, because they get a tax break that they are  
6 protected or maintained with public funds?

7 MR. SHULOCK: We'll have to look at  
8 Newington's brief itself.

9 PRESIDING OFFICER WEATHERSBY: I think  
10 you're correct that's the argument. Whether  
11 recreational trails, parks, et cetera, that have  
12 been protected or maintained in whole or in part  
13 with public funds includes current use parcels.  
14 Current use, as everybody knows, is a tax break,  
15 I guess you would call it that, where people  
16 basically have reduced assessment of their  
17 property if it's in current use. Property value  
18 assessment. So therefore did not pay as much  
19 taxes and there's been an argument that it's  
20 been therefore subsidized by the public.

21 I think it can be distinguished in that the  
22 land in current use hasn't been established with  
23 public funds. They're not, public funds aren't  
24 expended to establish the land. The town may

1 have less revenue than it would have, but funds  
2 from the town or other governmental agencies  
3 aren't used to establish those lands.

4 MR. FITZGERALD: So it seems to me also  
5 that current use, you can put a property in  
6 current use and you can take it out of current  
7 use, right? So they're not protected. They're  
8 not, you know, it's not a permanent designation  
9 or whatever.

10 PRESIDING OFFICER WEATHERSBY: It's up to  
11 the landowner.

12 MR. FITZGERALD: Right.

13 PRESIDING OFFICER WEATHERSBY: There's tax  
14 implications for doing so.

15 MR. FITZGERALD: Yes, but it's not, it  
16 doesn't ensure, I mean I read established,  
17 protected or maintained, you know, it would seem  
18 to me that that would imply some sort of  
19 permanent designation.

20 MR. WAY: I think, Madam Chair, what you  
21 were saying about the public funds that tax  
22 breaks brought about by current use, those are  
23 funds not realized by the town. It's nothing  
24 expended. So then, of course, the idea of

1 current use doesn't equate to public use because  
2 that's the next argument.

3 MR. FITZGERALD: Yes.

4 MR. WAY: So just because you have  
5 something that might be in current use, it  
6 shouldn't be assumed to be in public use or  
7 public access.

8 PRESIDING OFFICER WEATHERSBY: Mr. Shulock,  
9 go ahead.

10 MR. SHULOCK: I thought we were done.

11 PRESIDING OFFICER WEATHERSBY: Director  
12 Muzzey.

13 DIR. MUZZEY: I would just add that under  
14 RSA 79 there are a number of programs where  
15 certain types of properties and certain types of  
16 situations where property owners are offered a  
17 reduced local taxation depending on the program  
18 that we're talking about. There's RSA 79-A  
19 through something like G or H. And so there's,  
20 to single out one of those, the current use  
21 regulations, as something that would fit under  
22 these scenic resources and not consider all of  
23 them because they all offer similar tax  
24 advantages isn't consistent, and I don't think

1 we need to apply that to our aesthetics  
2 analysis.

3 MR. FITZGERALD: We have a similar  
4 situation with regards to water pollution and  
5 air pollution control facilities. They can get  
6 tax brakes, certain tax breaks. Certainly not  
7 scenic resources.

8 MR. WAY: I was just going to agree and I  
9 think as we look at, you brought up RSA 79, and  
10 I'm thinking of the tax breaks that come out of  
11 that 79-A or something like that by communities.  
12 It opens up a pretty big door that can be added  
13 on to or changed quite easily.

14 PRESIDING OFFICER WEATHERSBY: Okay. I'm  
15 sensing the agreement that current use parcels  
16 and those others similarly taxed benefit  
17 mechanisms are not to be considered scenic  
18 resources under Site 102.45.

19 Mr. Shulock, you had another category. I  
20 think it was about private property and persons  
21 standing on the curb?

22 MR. SHULOCK: Yes.

23 PRESIDING OFFICER WEATHERSBY: Was that  
24 argument being made?

1           MR. SHULOCK: That wasn't made as a legal  
2 argument, and I don't think we need to address  
3 it. It's just witness testimony.

4           PRESIDING OFFICER WEATHERSBY: Are there  
5 any other categories that you think we should  
6 address?

7           MR. SHULOCK: Argument made that all  
8 property may be scenic property because in New  
9 Hampshire we have the right to walk across  
10 anybody's property unless they post it. I think  
11 essentially the current use discussion covers  
12 that.

13           PRESIDING OFFICER WEATHERSBY: I think that  
14 was pretty well addressed, too, in the  
15 Applicant's Brief. Anybody feel like we need to  
16 have further discussion?

17                           (No verbal response)

18           PRESIDING OFFICER WEATHERSBY: Okay. So  
19 then I'm sensing that everyone's feeling as  
20 though the Applicant has done -- go back to my  
21 original question now -- has done at least an  
22 adequate job identifying the scenic resources  
23 under RSA, under Site 102.45 for the Visual  
24 Impact Analysis. Does anyone disagree with that

1 statement?

2 (No verbal response)

3 PRESIDING OFFICER WEATHERSBY: Hearing  
4 none, we'll move to our next issue.

5 MR. SHULOCK: So the next one I had was  
6 whether our decision should be based on the  
7 incremental difference in appearance between the  
8 current corridor and the proposed use of the  
9 corridor or without any comparison to the  
10 appearance of the current utility corridor  
11 meaning just looking at the effects of the new  
12 towers in and of themselves.

13 MS. DUPREY: Can you say that again?

14 MR. SHULOCK: I think part of the  
15 determinations under the Visual Impact Analysis  
16 were that it's really not that big a difference  
17 because we're moving from existing poles and  
18 lines to larger poles and lines. So we really  
19 only need to look at the difference that people  
20 will experience and not everything that people  
21 will experience, if that makes any sense.

22 MS. DUPREY: Did up to that very last.

23 MR. SHULOCK: So you could either, you  
24 could limit yourself to just what is somebody

1 going to experience when they see a transmission  
2 pole, a 75-foot pole, or you could limit  
3 yourself to what is somebody going to experience  
4 when they see a pole that's 30 foot higher than  
5 the previous one which I think is more what Mr.  
6 Raphael did; that it's only going to be a little  
7 difference because there's already an existing  
8 pole there.

9 MS. DUPREY: I don't think that you  
10 necessarily have to quantify it as "little," but  
11 it still seems to me, that's what makes sense to  
12 me that it is in my mind is the difference.

13 And while we're talking about the topic of  
14 what it will look like, I just wanted to raise  
15 the issue of the rights-of-way where for the  
16 most part at least as I understand it Eversource  
17 would have the right to clear those regardless  
18 of whether we -- they wouldn't have to come  
19 before us for approval to clear those. So I'm  
20 not sure how that impacts us here, but I guess  
21 in my mind it does have an effect on things.

22 PRESIDING OFFICER WEATHERSBY: Director  
23 Muzzey?

24 DIR. MUZZEY: My understanding from Mr.

1 Raphael's testimony is that he based his visual  
2 analysis on the extent of clearing that would be  
3 done for the construction of the Project, and I  
4 think your question addresses what might be done  
5 20 years from now from a maintenance perspective  
6 or that type of thing. I think that's something  
7 we could discuss when we talk about Best  
8 Management Practices and what those might be and  
9 look at it in that manner. Given that we don't  
10 know what might happen in 20 years, it's a  
11 little difficult for me to somehow fit it into  
12 our current visual analysis.

13 MS. DUPREY: I'm happy to talk about it  
14 whenever, but I actually don't think that's what  
15 I'm saying.

16 DIR. MUZZEY: Okay.

17 MS. DUPREY: What I'm saying is the  
18 testimony for the most part is that this  
19 easement is going to be cleared to 100 feet  
20 and that was a source of a lot of concern to  
21 people, and I guess my point is that Eversource  
22 has the right to do that without coming here.  
23 So it makes me wonder how much we should be  
24 taking that into consideration when people raise

1 the concern that it's, you know, things are  
2 going to be more visible, the current towers  
3 will be more visible to, the current poles will  
4 be more visible by the clearing of that  
5 right-of-way. So I'm not exactly sure how, you  
6 know, how this affects things, but it's in my  
7 mind anyway. So I just, I'm just keeping it  
8 there as I go through this.

9 PRESIDING OFFICER WEATHERSBY: So kicking  
10 that around for a minute, I think that yes,  
11 Eversource probably has the right throughout the  
12 easement to clear to its width, but it wouldn't  
13 unless there's a reason to do so and this  
14 Project is causing, is that reason that it's  
15 clearing, what it is. It's not clearing in all  
16 instances to the width of the right-of-way. So  
17 yes, they would have the right to do that, but  
18 in my mind, it would not happen except for a  
19 Project of some sort.

20 So I think in this Project, what I look at  
21 is the extent of clearing that has been  
22 identified and that has been factored into the  
23 visual analysis, and yes, they would have a  
24 right to go, to do that anyway, but it's this

1 Project which is causing it.

2 MS. DUPREY: I guess it's also fair to say  
3 that the clearing is what in some cases gives  
4 the visibility to the new thing that's being  
5 placed there. So even if I didn't agree  
6 specifically with that statement, I certainly  
7 understand that the clearing is, right, they  
8 have the power to do without coming before us or  
9 not, it's what's giving more visibility to the  
10 new things that are being introduced in the  
11 area.

12 It might affect me a little bit in terms of  
13 some of the neighbors who were concerned not so  
14 much about the specific towers, seeing those,  
15 but the fact that roads were being put in and  
16 whatnot because it just seems to me that they  
17 have the right to do that under their current  
18 easement documents. Thanks.

19 PRESIDING OFFICER WEATHERSBY:

20 Mr. Fitzgerald?

21 MR. FITZGERALD: Just, it seems to me that  
22 even though they might have the right to clear,  
23 their clearing is part of the construction plans  
24 of this Project, and so I want to get that out

1           there. But the other thing, is this also the  
2           time to raise the other question of removal --  
3           no? Okay. Fine.

4           PRESIDING OFFICER WEATHERSBY: I think what  
5           we should be talking about though is the,  
6           whether the question Dave teed up was to look at  
7           the incremental difference or pretend it wasn't  
8           here. Personally I don't see how we can act as  
9           though those lines are not there. To me it's an  
10          incremental difference. The poles exist.  
11          There's a visual element to that that is  
12          changing, but I think it's that change that we  
13          analyze and not starting fresh. Personally.

14          MR. WAY: And I agree. I'm just looking  
15          at, back to 301.05(6)(f), characterization of  
16          the potential visual impacts . . . that consider  
17          "the scale, elevation, and nature of the  
18          proposed facility relative to surrounding  
19          topography and existing structures."

20          So the emphasis on existing structures. So  
21          I think that was the intent was that we weren't  
22          going to ignore what was already there. We're  
23          not starting fresh.

24          MR. SHULOCK: To me it's a false dichotomy

1 because I think it's a little bit of both,  
2 right? Because when we look at the 7 things  
3 that we have to consider, we have to look at the  
4 existing character of the area, and we have to  
5 look at the scope and scale of the change to the  
6 landscape that's visible. So I think we're  
7 really looking at it all.

8 PRESIDING OFFICER WEATHERSBY: Okay. Seems  
9 as though we have a consensus on that point.

10 MR. FITZGERALD: Chris, what was the  
11 section of the rule that you were referring to?

12 MR. WAY: 301.05(b)(6)(f).

13 MR. FITZGERALD: Scale, elevation, and  
14 nature of the proposed facility. Okay. Thank  
15 you.

16 MR. WAY: Photosimulation of number 7 also  
17 supports that point as well.

18 PRESIDING OFFICER WEATHERSBY: What's next,  
19 Mr. Shulock? Want to talk about the methodology  
20 or the sifting?

21 MR. SHULOCK: I actually thought that we  
22 had sort of discussed that in terms of both of  
23 the experts had looked at it. They disagreed  
24 somewhat on methodology, but they came to

1           essentially the same conclusions. But if people  
2           want to discuss it further -- that was my view  
3           as well, but if people want to discuss it  
4           further than that, we should.

5           PRESIDING OFFICER WEATHERSBY: You want to  
6           talk about methodology and rating system and I  
7           mean, there's a number of criticisms about that.  
8           I agree I think in the end everyone differed as  
9           to the method, but to the end result there was  
10          agreement except for the road crossings.

11          MR. SHULOCK: Right.

12          PRESIDING OFFICER WEATHERSBY: Which has  
13          been addressed in litigation.

14          MR. SHULOCK: I think what it points out is  
15          there's more than one way to do a visual  
16          assessment, and there is some inherent degree of  
17          subjectivity in any of them, and it's important  
18          to have a process like this that tests to see  
19          back and forth to see whether there might be an  
20          additional few, one or two or many, resources  
21          that end up not being identified and then  
22          evaluated. And here I think the process brought  
23          us to a point where even though there were  
24          differences in the two methodologies for

1 winnowing and evaluating, you end up in the same  
2 place or close to. So I think based on those  
3 methodologies we've come to a point where we can  
4 do our work. If that's -- that's my view of it.

5 MS. DUPREY: I didn't look at this quite as  
6 closely as you, I think, did. And so I just  
7 have this question. Durham Historic Association  
8 agree with that proposals?

9 MR. SHULOCK: No. I don't believe they do.

10 MS. DUPREY: So what we're really saying is  
11 the Applicant and Counsel for the Public have  
12 come to that agreement.

13 MR. SHULOCK: I was looking at the two  
14 witnesses who were qualified to do the analysis.

15 MS. DUPREY: Okay. The experts. Yes.

16 MR. FITZGERALD: I guess I would just add  
17 that the question in my mind would only arise if  
18 we felt that the Applicant's visual analysis did  
19 not comport to our rules. I don't have that  
20 feeling. But I would say that, you know,  
21 whatever the differences were between the two,  
22 how one criticized the other, et cetera, are  
23 somewhat moot as long as the Applicant's work  
24 was done in accordance with our rules. So I

1           guess that's what I'm asking, if anyone feels  
2           that that was a flaw pointed out with regards to  
3           the Applicant's analysis. I think our job is to  
4           evaluate the Applicant's analysis.

5           PRESIDING OFFICER WEATHERSBY: I don't  
6           think our rules tell you exactly how to do it.  
7           I think that's left to the experts. There were  
8           a number of criticisms. Newington, for example,  
9           was upset that the Newington Historic District  
10          got cut out early on from consideration. The  
11          visual impact did come up in the historic sites  
12          review. But as far as visual impact, I believe  
13          that that was one of Newton's criticisms, if I'm  
14          recalling correctly.

15          MR. FITZGERALD: Because it was underground  
16          there?

17          PRESIDING OFFICER WEATHERSBY: Yes.  
18          Because it had low, had high cultural, achieved  
19          high on the cultural but low on what you could  
20          see or something like that. I can't remember  
21          exactly.

22          MR. SHULOCK: So I suppose the question  
23          might be posed as are there sites that we feel  
24          have not been adequately reviewed or mitigated

1 and do we have a basis in the record for making  
2 a finding that's contrary to expert testimony  
3 that we've given credence to.

4 DIR. MUZZEY: The one area that comes to my  
5 mind, we heard a good deal of testimony about  
6 Little Bay, and the -- what we heard was the  
7 high scenic value of Little Bay bolstered by a  
8 great deal of effort that's gone into its  
9 preservation and its improvement recently. And  
10 how does the Project both with the transition  
11 pole on the Durham side of Little Bay as well as  
12 the concrete mattresses compare to the criteria  
13 we need to judge as to whether or not that's an  
14 unreasonable adverse effect on that resource.

15 Little Bay fell out of Mr. Raphael's  
16 analysis as something that didn't need to be  
17 considered in the end, and I think there was a  
18 great deal of criticism of that as well as his  
19 photosimulation of the concrete mattresses and  
20 whether that was an accurate visual depiction of  
21 the extent of the mattresses and their  
22 visibility.

23 MR. WAY: I would tend to agree, Director  
24 Muzzey. We haven't really talked too much about

1 the visual impact of the concrete mattresses.  
2 That is one thing that I think was, didn't have  
3 a lot of prominence in the discussion with Mr.  
4 Raphael and has come up repeatedly with the  
5 Intervenors and counsel as well. I think as I  
6 recall we got, we had to request or we requested  
7 photosimulation for the Newington side of the  
8 Bay for concrete mattresses.

9 DIR. MUZZEY: Durham.

10 MR. WAY: So I don't know what -- go ahead?  
11 Sorry.

12 DIR. MUZZEY: Yes.

13 MR. WAY: So at some point I think we've  
14 got to get into that visual discussion. I don't  
15 know whether that's now or it's later.

16 MR. FITZGERALD: I just wanted to clarify  
17 your characterization of the Little Bay fell out  
18 of Mr. Raphael's -- I believe it was the case  
19 that he considered Little Bay, he evaluated it,  
20 and he determined that the scenic impact was  
21 going to be very minor. I don't think it was  
22 eliminated from consideration.

23 MR. WAY: Maybe, and, you know, you bring  
24 up a good point. Maybe I wasn't persuaded that

1 the concrete mattress would, I tended to get the  
2 sense that the concrete mattress might be more  
3 visible than was portrayed. And so maybe, I  
4 don't think it was that he didn't give it  
5 prominence, but maybe we came to different  
6 conclusions on that, and I'm not saying that,  
7 I'm not making the statement on concrete  
8 mattresses by any extent with that statement.  
9 I'm just simply saying that's something that we  
10 may have to talk about at some point.

11 MR. FITZGERALD: I guess I recall his  
12 testimony as being or his methodology that he  
13 considered the center of the bay to be the  
14 viewpoint of the resource, and that when you  
15 look at those concrete mattresses and the  
16 transition tower, that they would not be  
17 significantly inconsistent with the existing  
18 coastline when viewed from the center of the Bay  
19 as opposed to if you're sitting on one of the  
20 Intervenor's front lawns and the mattresses  
21 right in front of you, and I understand that  
22 might be more of a visual impact, but that's not  
23 a public resource. So it was my impression that  
24 he fully considered it and determined that it

1 would have, determined that both of those would  
2 not have a significant visual impact from the  
3 viewpoint at the center of the bay.

4 PRESIDING OFFICER WEATHERSBY: So I think  
5 this appeared in a couple spots in his analysis.  
6 The first complaint I think is that in the  
7 filtering scheme he used, Little Bay which  
8 people consider to be a pretty significant  
9 resource, visual resource, didn't make the cut.  
10 It had moderate ratings of both cultural and  
11 scenic quality and needed to score moderate/high  
12 to move on.

13 MR. FITZGERALD: Little Bay in and of  
14 itself.

15 PRESIDING OFFICER WEATHERSBY: Little Bay  
16 in and of itself. Similarly with Newington  
17 Center Historic District, whatever we were  
18 talking about before, high cultural, low for  
19 scenic quality and therefore ended up as  
20 moderate and when you added things together and  
21 that therefore also didn't move on so that was  
22 sort of the first criticism.

23 For Little Bay, he then, and I think  
24 something similar happened to Little Bay Road

1 further down in the analysis that got kicked  
2 out.

3 MR. FITZGERALD: Um-hum.

4 PRESIDING OFFICER WEATHERSBY: For Little  
5 Bay, he did then still do photo sims of Little  
6 Bay first without the concrete mattresses and  
7 then we asked for the concrete mattresses to be  
8 added in so we do have those photosimulations  
9 because the Committee, I think, and I think the  
10 Applicant realized that the visual effect of  
11 Little Bay was going to be an important factor  
12 despite it getting eliminated early on through  
13 the rating system which, again, to me means it's  
14 a pretty imperfect rating system. Is it  
15 adequate? You know, I don't know. It's trying  
16 to make a subjective experience objective, and  
17 that's a very difficult thing to do.

18 MS. DUPREY: When I thought about the  
19 mattresses in Little Bay and I was asking  
20 someone about how long Little Bay was, it just  
21 feels like a really small impact on a long  
22 channel. And so while it might impact a  
23 homeowner, although that was really hard to  
24 ascertain and I asked every single person if you

1           were going to be able to see it from your house  
2           who testified when I was in the room, for the  
3           person utilizing Little Bay who doesn't  
4           necessarily live right next door to where the  
5           mattresses are going to go, it just seems to me  
6           to be not a very big physical area as compared  
7           to the channel itself. And so I didn't feel  
8           like someone was going to be that impacted by  
9           them.

10           PRESIDING OFFICER WEATHERSBY: Director  
11           Muzzey?

12           DIR. MUZZEY: One of the ways I tried to  
13           quantify the potential footprint of the  
14           mattresses was by comparing it to other  
15           footprints I'm familiar with. So if you take  
16           your typical ranch house, it's about a thousand  
17           square feet, roughly 25 by 40. So if you think  
18           of the footprint of a ranch house times 8-plus,  
19           you come to 8,000 square feet which is the high  
20           end that the Applicant expects to use. It's the  
21           number used in the Wetland Permit.

22           Now, we know that not all, if 8,000-odd  
23           feet are used, we know that not all of them will  
24           show at the lowest of tides. However, when I

1 compare that to the visual simulation that was  
2 provided, what that looks like is a dock sitting  
3 by the side of Little Bay. So again, I did not  
4 feel that the visual analysis was particularly  
5 helpful in this area. It's a difficult area for  
6 me to assess because we don't know how many of  
7 those 8,000-odd square feet will be utilized.  
8 We don't know where, and we don't know whether  
9 or not it will be visible at low tide. We do  
10 know that a tremendous amount of tidal area is  
11 bare ground at low tide so it does, it does open  
12 up a large amount of area where they may be  
13 visible if they are used.

14 MS. DUPREY: Is the 8,000 square feet on  
15 both sides? Each side is 8,000 square feet or  
16 total?

17 DIR. MUZZEY: Total.

18 MS. DUPREY: So is your visual --

19 DIR. MUZZEY: My ranch house analogy?

20 MS. DUPREY: It would be four of them  
21 although a thousand square feet is a pretty  
22 little one, but okay. And I'm thinking length,  
23 length of it which was 130 feet maybe? On a  
24 channel that's 10,000 feet long about, two

1 miles, did they say, I thought? So I think  
2 that's where I was coming from in terms of  
3 trying to get a sense of the scale of it to the  
4 channel itself.

5 DIR. MUZZEY: I believe the width is  
6 actually less.

7 MS. DUPREY: Width is two miles? Length  
8 though is -- you mean the length?

9 DIR. MUZZEY: Width of Little Bay.

10 MR. FITZGERALD: Width is about 6000 feet.

11 MR. SCHMIDT: If I may, LandWorks did  
12 address that. On the Durham side the closest  
13 view at low tide is about a half a mile away.  
14 So that's the center of the bay. And then the,  
15 so at that vantage point of view, about a half  
16 mile to see the mattresses. And the mattresses  
17 on that side would be approximately -- oh,  
18 excuse me. 3550 square feet on that side. So  
19 it would be about, 24 mattresses is 8 by 20. On  
20 the Newington site the area of visible  
21 mattresses will be approximately 16 to 18 feet  
22 by 60 feet long and that would be a half mile  
23 also. 2060 feet. So I don't know if that helps  
24 clear that up.

1                   PRESIDING OFFICER WEATHERSBY: Mr. Way?

2                   MR. WAY: You know, so when I look at this,  
3 and as I said I think it's probably going to  
4 have more prominence than what was conveyed, I  
5 also did what Director Muzzey did as well. I  
6 tried to scale in my mind what we're talking  
7 about and then to place that, and then I tried  
8 to think about that in the context of the entire  
9 bay and what the visibility will be. There's no  
10 sugar coating this. For people that live right  
11 there, this is in the intertidal zone. On the  
12 Newington side that intertidal zone is quite a  
13 wide stretch, particularly at a drop dead tide.  
14 The Durham side, you know, obviously it's a  
15 little less, but it's still there.

16                   But then on the other hand, you've got the  
17 rocky coast. You know, you've got what some  
18 have said, although I don't know, I used to live  
19 on the ocean. You had the concrete boat slips,  
20 you know, that it could look something like that  
21 over time. I think it's not going to be as  
22 startling as the worst case, but there will be  
23 some prominence for people that live there. But  
24 I think from the bay itself, it's not going to

1 be a huge feature.

2 PRESIDING OFFICER WEATHERSBY: I think I'd  
3 like to make two points. One is the photo sim  
4 that we looked at was taken from the middle of  
5 the bay, about a half a mile out, and I  
6 understand why they did it. They were trying to  
7 meet our rules, the expectation of the typical  
8 viewer, et cetera, et cetera.

9 I think in Little Bay there's kind of two  
10 categories of typical user. There's the  
11 fishermen and recreational boaters that are  
12 going up and down the middle of the channel, and  
13 there's all the people who like to paddle, and  
14 they're a lot closer, and it will have much more  
15 of an effect on the people that are up close  
16 when you don't see as much of the shoreline.

17 That said, you know, we can't fault them  
18 for choosing one of the types of typical  
19 viewers. Would have been nice to have both so  
20 we could assess, but that's not what is  
21 required.

22 The other is that there is a little bit of  
23 a disconnect in our rules, I think, because we  
24 don't have visual assessments from private

1 property. It's only publicly accessible lands  
2 unless they're invited in and agree to do it,  
3 but at the same time we're asked to assess the  
4 property value impact on private property  
5 through another set of our rules. And the  
6 property value impact comes primarily from the  
7 visual impact and yet we don't have that  
8 information, and I think that's a problem with  
9 this process that we're not going to solve here  
10 today. I just wanted to vent about it and that  
11 that information would be helpful to have  
12 because, as you said, there's no question that  
13 the folks out on Durham Point or on the  
14 Newington side, they're going to be looking at  
15 these things every time they go to put their  
16 kayak in, maybe from their kitchen window. I  
17 don't know. But they will be living with these.

18 MS. DUPREY: I know we're talking about  
19 concrete mattresses, but we're also talking  
20 about Little Bay. I have to say I was more  
21 bothered when I looked at the photo sims of, I  
22 think it's on the Newington -- no, it can't be  
23 because that's underground there so it must be  
24 the Durham side. The new transition tower where

1           there's a lot of clearing and that I think will  
2           be very visible. It's tall, and it's going to  
3           be bald as least at the beginning, and I wonder  
4           if there was any plan for doing any planting  
5           around it. Maybe it has to be kept open in  
6           order to have access to it, but that would be  
7           one place that looking at those photo sims that  
8           it could be useful to get some screening to take  
9           away from the massive of that very visible  
10          tower.

11                 PRESIDING OFFICER WEATHERSBY: We do have a  
12           planting plan for the Millers that's been  
13           proposed. I think they are even working with  
14           folks out there.

15                 MS. DUPREY: I think it's the Getchell  
16           property.

17                 PRESIDING OFFICER WEATHERSBY: Getchell is  
18           an Eversource property.

19                 MS. DUPREY: They own it, but that's my  
20           recollection of looking at the photo sims is  
21           that's where the land is really opened up.

22                 MR. WAY: Can we pull that up?

23                 MR. SHULOCK: 146?

24                 MR. IACOPINO: What number?

1 MR. SHULOCK: That was a stab in the dark.  
2 146.

3 PRESIDING OFFICER WEATHERSBY: Director  
4 Muzzey:

5 DIR. MUZZEY: I would agree with you that  
6 that's a fairly large parcel, and it is one  
7 owned by the Applicant, and I do think there is  
8 an opportunity there for obviously not hide the  
9 transition pole because it's a very large  
10 installation, but I think there is an  
11 opportunity to improve the scenic qualities of  
12 that parcel and provide some sort of planting  
13 scheme that will within a few years begin to  
14 take the edge off the look of that brand-new  
15 construction, recently cleared lot. And so I  
16 would be interested in discussing that when we  
17 get to the point of talking about mitigation for  
18 scenic impacts, and it may also relate to some  
19 of the goals for natural resource protection of  
20 Little Bay and Great Bay and whether things  
21 could be done there as well for those types of  
22 resources.

23 MR. WAY: That's also the point where the  
24 movement of that small -- was it called the

1 Carriage House? Or that -- the Cable House. So  
2 that's moved to a new destination off to the  
3 side.

4 MR. SHULOCK: So we have revised  
5 simulations in Applicant's Exhibit 186, starting  
6 with electronic page 7.

7 DIR. MUZZEY: 186?

8 MR. SHULOCK: Yes. 186. Starting at page  
9 5 and going to 10. And that's showing with the  
10 concrete pads, the transition towers and with  
11 the pads that have, that have been dyed. So no  
12 pad, regular concrete and dyed concrete if I  
13 remember correctly.

14 MR. WAY: And the Cable House is  
15 stationary. Is that prior to movement or is  
16 that after?

17 DIR. MUZZEY: My assumption was that it was  
18 prior to rehabilitation and prior to movement.  
19 But it's not being moved far. It's a small  
20 building.

21 MR. WAY: 15 feet or so? Something like  
22 that?

23 DIR. MUZZEY: Roughly.

24 MS. DUPREY: I'm going to keep looking.

1 I'm not sure this is the photo sim I was looking  
2 at because that looks like it's open both  
3 places, and I feel like I saw one where --  
4 although I remember it being opened so maybe  
5 it's the fault of the photo sim.

6 MR. SHULOCK: Maybe Exhibit 96.

7 MR. SCHMIDT: That's where I was going to  
8 go next.

9 MR. SHULOCK: Actually less open on that  
10 one.

11 MR. WAY: Yes. This one? 96.

12 MR. FITZGERALD: Exhibit 196?

13 MR. SCHMIDT: Electronic page 2.

14 PRESIDING OFFICER WEATHERSBY: We're  
15 Looking at Exhibit 96. Electronic page 2.

16 MR. WAY: Page 2 and 3.

17 MR. IACOPINO: Going to bring it up on the  
18 big screen. 2 and 3 if you can click back and  
19 forth to show the simulation.

20 MR. SCHMIDT: I think there's another one  
21 there.

22 MR. WAY: My understanding is that the  
23 Miller house is right off to the left; is that  
24 correct? In that clearing.

1 MR. FITZGERALD: You can see it off to the  
2 left behind the trees.

3 DIR. MUZZEY: The Millers' concerns also  
4 related to installation near their driveway and  
5 entrance to their driveway, and that may not be  
6 visible here.

7 MR. WAY: Right.

8 PRESIDING OFFICER WEATHERSBY: Look at  
9 Applicant's Exhibit 247. There's the Miller  
10 property proposed mitigation plan.

11 I honestly can't remember right now where  
12 the Millers stood with this plan. If anyone can  
13 help me, that would be good. It does address  
14 plantings near the driveway. Plantings along  
15 the property line to help shield the views of  
16 the poles. Existing structures.

17 DIR. MUZZEY: My notes from when we heard  
18 from the Durham Residents have Regis Miller as  
19 noting that there is no acceptable mitigation  
20 agreement in place and that they had received  
21 some conflicting information. Do I have the  
22 right Miller?

23 MR. WAY: There are two Millers.

24 DIR. MUZZEY: This is Regis Miller. Do I

1 have the wrong Miller? Looking at the comments  
2 of Vivian and Jeff Miller, my notes record that  
3 they were not in favor of the landscaping plan  
4 and were highly critical of it.

5 PRESIDING OFFICER WEATHERSBY: Thank you.  
6 Ms. Duprey?

7 MS. DUPREY: I think I was mixing something  
8 up when I was looking at the photo sims, and the  
9 one that I was thinking of was Applicant's  
10 Exhibit 269, and it was the Millers' house,  
11 you're right, Madam Chair. It was the big hole  
12 that got created by putting in the underground,  
13 and I think that I was thinking -- hole in the  
14 trees. I was thinking perhaps if some of that  
15 was filled in that, which I don't know if it can  
16 be, maybe it needs to be open if it's  
17 underground, but that that might distract a  
18 little bit more from the concrete mattresses.

19 PRESIDING OFFICER WEATHERSBY: So 269? So  
20 that's the Newington side?

21 MS. DUPREY: Yes.

22 PRESIDING OFFICER WEATHERSBY: Yes.

23 MS. DUPREY: And I think that that's the  
24 Millers' house off to the left there; is that

1 correct?

2 PRESIDING OFFICER WEATHERSBY: No.

3 MS. DUPREY: Okay.

4 PRESIDING OFFICER WEATHERSBY: Millers are  
5 on the other side of the bay.

6 MS. DUPREY: Okay. I don't know whose  
7 house that is. I wonder if that's the people  
8 who gave us the easement. Or gave Eversource  
9 the easement.

10 MR. IACOPINO: Yes.

11 PRESIDING OFFICER WEATHERSBY: It is.

12 MS. DUPREY: Okay.

13 MR. WAY: That might be helpful also, too.  
14 Dawn, I don't know if you can put up Exhibit  
15 269, but that may be a new visual for some in  
16 the audience that haven't seen that.

17 MR. SCHMIDT: Electronic page 3, Dawn.

18 PRESIDING OFFICER WEATHERSBY: Please don't  
19 forget to speak directly into your microphones.  
20 Thank you.

21 MR. SCHMIDT: Then if you go to 4, I  
22 believe. No. Go back to 2 and toggle between 2  
23 and 3 and you'll see the area.

24 DIR. MUZZEY: Page 4 shows the concrete

1 mattress with some sort of dye applied to it.

2 MR. SCHMIDT: Tinted.

3 DIR. MUZZEY: Tinted exactly. And this is  
4 a helpful visual in that it begins to show the  
5 articulation that we heard about. If you're  
6 able to zoom in on the mattress, you can begin  
7 to see that.

8 MS. DUPREY: Is that to scale? The  
9 mattresses just don't look that big to me.

10 PRESIDING OFFICER WEATHERSBY: I think  
11 that's where the three cables come together so  
12 it's more narrow. And as for plantings, I mean  
13 you have to remember there is a duct bank that  
14 has to go up that strip so it's not going to be  
15 having trees on top of it. Maybe some shrubs  
16 and certainly grass it over or something, but --  
17 I don't think that we can design a planting plan  
18 for that.

19 MR. WAY: Also don't know if this concrete  
20 mattress, what point in the tidal cycle it was  
21 taken. It looks like it's mid low tide.

22 PRESIDING OFFICER WEATHERSBY: Definitely  
23 not low.

24 MR. WAY: Mid or something like that. So I

1 think to your point, this is where they come  
2 together. You know, in the whole scheme of  
3 things it's still workable, but it's a boat  
4 slip.

5 DIR. MUZZEY: I do think that the visual on  
6 page 4 which shows a tinting that it's closer to  
7 the soils along the water's edge. It's less  
8 obvious, makes for a less obvious view than if  
9 it had been the brand-new concrete untinted.  
10 Obviously with time, in this type of environment  
11 the concrete will change color, but again, with  
12 the idea that with new construction, tinting it  
13 would probably help it in the beginning until it  
14 weathers.

15 MS. DUPREY: Agreed.

16 DIR. MUZZEY: When we do get to mitigation,  
17 I do remain interested to see whether any  
18 additional landscaping at the Getchell property  
19 on the Durham side would be appropriate.

20 PRESIDING OFFICER WEATHERSBY: I think we  
21 were talking about the analysis. Are you done  
22 with methodology? Acknowledging it wasn't  
23 perfect. We have differences of opinion.  
24 Different, should we move on from that and talk

1 about mitigation or I guess road crossings?

2 We're good with methodology for now and  
3 feel as though it was at least adequate?

4 (No verbal response)

5 PRESIDING OFFICER WEATHERSBY: Where would  
6 you like to take us, Mr. Shulock?

7 MR. SHULOCK: Well, where I thought we  
8 would go is to talk about individual locations  
9 that any Committee member had a concern with.  
10 And I think we all focused on Little Bay. I  
11 don't know if there were any others.

12 Okay. So maybe --

13 PRESIDING OFFICER WEATHERSBY: Would it be  
14 helpful to the Committee to review the  
15 photosimulations or are we fine with those  
16 depictions? Would anyone like to review the  
17 photosimulations?

18 MR. SHULOCK: There's probably no harm in  
19 going through them all, including the photos of  
20 the crossings taken by Mr. Lawrence.

21 So we start with Exhibit 96. Is that the  
22 first chunk of simulations?

23 PRESIDING OFFICER WEATHERSBY: Could you  
24 repeat the question number?

1 MR. SHULOCK: That was a question to myself  
2 actually whether 96 was the first big chunk of  
3 visual assessments or visual simulations.

4 So the first one that we were just looking  
5 at, those were simulations of the crossing at  
6 Little Bay.

7 MR. IACOPINO: Dawn, could you put it up?  
8 This is Exhibit 96. Applicant's Exhibit 96. Go  
9 to page 2, please. Take it away, Dave.

10 MR. SHULOCK: Okay. So --

11 MR. WAY: Mr. Shulock, as we go through  
12 these simulations, what is our task for each?

13 MR. SHULOCK: Well, I was going to suggest  
14 we look at from the perspective of the 7  
15 criteria we're supposed to consider. So this  
16 picture which is on electronic page 2 shows the  
17 Durham side of Little Bay and the existing  
18 conditions. So we'd be looking at the existing  
19 character of this specific area. And we know  
20 that this is, the scenic resource is used by the  
21 general public for commercial and recreational  
22 fishing, boating, kayaking. I think all those  
23 uses were listed.

24 Then we need to look at the scope and scale

1 of the change, and we had a bunch of exhibits  
2 that showed that including the next one, the  
3 next picture, showing the transition tower from  
4 a particular angle. This is going to test my  
5 memory. In Exhibit 186 starting on page 5 we  
6 had additional simulations of this from another  
7 angle. The first page showing existing  
8 conditions from a more centered angle. The next  
9 picture showing the proposed change including  
10 the transition tower and the towers behind it  
11 and concrete pads in their natural shape.

12 Then the next simulation showing, again,  
13 scope and scale of change showing the proposed  
14 change with concrete pads that have been dyed,  
15 if I understand that correctly, and then the  
16 next simulation, existing conditions. Is that  
17 right? I can't read that part.

18 DIR. MUZZEY: So we're on page 8, is that  
19 correct?

20 MR. SHULOCK: Yes. You'll have to pull  
21 that up because I can't read what it shows.

22 MS. DUPREY: Is this the Getchell property?

23 MR. SHULOCK: This is the Getchell  
24 property, yes. So existing conditions at low

1           tide again.    And the next one?  Is this a  
2           repeat?  I don't know the difference between 6  
3           and 8.  I have to pull it up.

4           MR. SCHMIDT:  I think 6 is.

5           MR. IACOPINO:  There's a description on the  
6           right-hand side of each one.

7           DIR. MUZZEY:  I didn't have mine over that  
8           far.  Existing condition at low tide is 8.  
9           Earlier one was existing conditions with no tide  
10          specified.

11          MR. SHULOCK:  My computer is frozen.  So I  
12          can't get anywhere.

13          DIR. MUZZEY:  The tide is not specified in  
14          5.  It is specified --

15          PRESIDING OFFICER WEATHERSBY:  I think it's  
16          the tide, the tide is slightly different when  
17          you look at the same photo, either existing  
18          conditions in tinted or tinted, flick through  
19          them you can see that the tide line changes  
20          somewhat.

21          DIR. MUZZEY:  It's simulated low tide.

22          MR. SHULOCK:  There's that.  And then there  
23          was another exhibit that showed how this fit  
24          into the broader landscape and how these towers

1 sort of fit in on a broader view. Does anybody  
2 remember what exhibit that was?

3 DIR. MUZZEY: Is it --

4 MR. WAY: When you say a broader view, are  
5 we talking about the same target location that  
6 we have on the screen right now?

7 MR. SHULOCK: Yes.

8 MR. FITZGERALD: It was a composite of like  
9 three pictures, I think.

10 DIR. MUZZEY: Um-hum.

11 MR. FITZGERALD: I can't remember the exact  
12 number, but --

13 MR. FITZGERALD: I thought I remembered Mr.  
14 Raphael showing it and explaining that that put  
15 it in greater context in terms of how these  
16 structures would be seen. There were a number  
17 of other structures that these, you know,  
18 wouldn't jump out at you so significantly.

19 DIR. MUZZEY: I think his point may have  
20 been, and it was disagreed with by various  
21 parties, is that it was developed shoreline.

22 MR. FITZGERALD: Right.

23 DIR. MUZZEY: So that becomes a relative  
24 judgment. When you look at the shoreline do you

1 see the buildings or do you see all the trees.  
2 And so it was one of those arguments that was  
3 difficult to prove objectively.

4 PRESIDING OFFICER WEATHERSBY: I think we  
5 may be referring to Durham Exhibit 25 which is  
6 just photos of the different aspects of the bay  
7 including the Getchell property.

8 MR. SHULOCK: I'm pretty sure it was a  
9 Raphael picture with analysis of relative scale  
10 compared to other items that are in the  
11 viewshed. Because all of these visual  
12 simulations are taken pretty much head-on,  
13 right? So you're just staring directly at what  
14 that, the piece of metal, whereas he had a more  
15 landscaped view that showed scale as compared to  
16 other items in the viewshed.

17 DIR. MUZZEY: I think that also gets back  
18 to what our Chair had talked about. Whether are  
19 we talking at from the perspective of a motor  
20 boater in the center of the channel or from the  
21 paddler's perspective which is closer up as well  
22 as -- so again, it's different views of the same  
23 area.

24 MR. SHULOCK: Although I don't think we

1           have any photosimulations of that. All that we  
2           have are the photos from the center.

3           DIR. MUZZEY: Unless the photos in the  
4           Durham exhibits which I haven't quite called up  
5           yet provide that.

6           MR. WAY: No.

7           DIR. MUZZEY: No?

8           PRESIDING OFFICER WEATHERSBY: So getting  
9           back to why we're looking at all these, this is  
10          helping us determine the scope and scale of the  
11          change in the landscape and the extent to which  
12          the Reliability Project would be a dominant and  
13          prominent feature within this landscape; is that  
14          correct, Mr. Shulock?

15          MR. SHULOCK: That's correct. And if  
16          people feel that they can tell from the photos  
17          that we've seen and their memory of that other  
18          exhibit, then I think we can proceed.  
19          Otherwise, I'll keep looking through the record  
20          for it.

21          MR. FITZGERALD: I think TD-UNH 25 is  
22          the --

23          MR. WAY: UNH? 25?

24          MR. FITZGERALD: Yes.

1 DIR. MUZZEY: So as I look at exhibit --  
2 let me just --

3 MR. SHULOCK: I found it.

4 DIR. MUZZEY: Okay. You jump in.

5 MR. SHULOCK: So Exhibit 142 of Applicant  
6 electronic page 24 is where it starts. 142 is  
7 Newington and electronic 25 is Newington.

8 MR. SCHMIDT: What exhibit are you on?

9 MR. SHULOCK: 142.

10 MR. WAY: Applicant's 142?

11 MR. SHULOCK: Yes.

12 MR. FITZGERALD: Page 24 and 25?

13 MR. WAY: Is that electronic?

14 DIR. MUZZEY: Yes.

15 MR. SHULOCK: My mistake. The markings for  
16 scale was for Newington.

17 PRESIDING OFFICER WEATHERSBY: So page 25,  
18 it's labeled view of the Newington shoreline,  
19 but it's the Durham shore. That's confirmed in  
20 the description of the photo. It's just  
21 mislabeled. And the map.

22 MR. FITZGERALD: So is 24 the Newington  
23 side?

24 DIR. MUZZEY: Page 24?

1 MR. FITZGERALD: Yes.

2 DIR. MUZZEY: Yes.

3 MR. FITZGERALD: Exhibit 142?

4 MR. SHULOCK: It's just a broader view of  
5 the Project area.

6 MR. FITZGERALD: The text is its purpose is  
7 to demonstrate the existing development and  
8 specific structures along and near the shoreline  
9 create a visual pattern that will not be  
10 undermined or altered by the visibility of the  
11 short section of concrete matting. There are an  
12 extensive number of human elements.  
13 Light-colored structures and buoys and moorings  
14 that provide context.

15 MR. WAY: 25 is existing conditions.

16 MR. FITZGERALD: They're both existing.

17 MR. WAY: They're just trying to show the  
18 extent of development.

19 MR. SHULOCK: I just should read the  
20 purpose statement.

21 MS. DUPREY: But I think it also shows what  
22 the scale of like the mattresses is, even the  
23 towers would be as compared to the channel  
24 itself. Different for a paddler than it is for

1 a motor boater, but I think it also serves to do  
2 that.

3 PRESIDING OFFICER WEATHERSBY: So having  
4 looked at all these photo sims and broad shots  
5 and et cetera, I think we should talk about  
6 people's, how people feel about the scope and  
7 scale of the change in the landscape and the  
8 extent to which the Project will be a dominant  
9 and prominent feature within that landscape.

10 Director Muzzey?

11 DIR. MUZZEY: As I compare the before and  
12 afters, the Project does become more prominent  
13 in the landscape. The towers as we all know are  
14 taller. They are more defined. In my mind, I  
15 judge that as an adverse effect on the  
16 aesthetics of the area using the seven criteria.  
17 I don't see it as an unreasonable adverse  
18 effect, but I do see it as an opportunity for  
19 some mitigation.

20 MR. SHULOCK: I agree completely.

21 MR. SCHMIDT: I agree.

22 MR. FITZGERALD: When you say mitigation  
23 are you talking mitigation specific to more  
24 localized properties or from these views that

1 are further back in the bay? As I take a look  
2 at this photograph here, I don't see how you,  
3 how you mitigate unless you put in something  
4 that's as tall as the towers. So are you  
5 talking about mitigation that would mitigate  
6 like the Millers' view and so on or mitigation  
7 from this vantage point?

8 DIR. MUZZEY: I was thinking of the vantage  
9 point that the photo sims were taken. I think  
10 the question of what may be appropriate  
11 mitigation for the abutters is a different  
12 issue.

13 MR. FITZGERALD: I guess that's what I'm  
14 asking. So what kind of mitigation would you be  
15 thinking here?

16 DIR. MUZZEY: Well, I think it was our  
17 Chair who earlier said that we shouldn't be  
18 designing mitigation plans, and I agree with  
19 that entirely. I do think that we could begin  
20 to think about goals for mitigation. And one of  
21 the goals, the first goal that comes to my mind  
22 is the idea of how do we increase the scenic  
23 quality of this area despite the increased  
24 towers and increased scale girth of the towers.

1 MR. FITZGERALD: I've been trying to  
2 wrestle with this question to some degree  
3 because as I understand, for instance, if I have  
4 a home and off in the distance I can see the  
5 towers, I can put relatively small trees and  
6 plantings near my home that will obscure my view  
7 of the towers. If I'm in the middle of the bay,  
8 I can't put plantings near me that would block  
9 my view.

10 DIR. MUZZEY: No. You cannot.

11 MR. FITZGERALD: So I guess I'm, you know,  
12 and so to me, that only leaves planting  
13 something that's as tall as the new tower.

14 DIR. MUZZEY: I think, I had something in  
15 mind that's a middle ground to that.

16 MR. FITZGERALD: I'm open.

17 DIR. MUZZEY: Because you can't make the  
18 towers go away.

19 MR. FITZGERALD: Right.

20 DIR. MUZZEY: They're very large. They're  
21 larger than the surrounding tree growth.  
22 They're larger than the surrounding tree growth  
23 will ever be. However, when this Project is  
24 constructed, and we see this with highway

1 projects a great deal, new construction has a  
2 very barren look to it, a very sharp look to it.  
3 So when I think about a goal of creating  
4 something with greater scenic qualities, it  
5 would be potentially would removing the house  
6 increase the scenic qualities of that parcel.  
7 Would additional plantings take the sharp edge  
8 off of the view and so that the view from the  
9 water is more continuously treed even if we do  
10 have towers above the trees. And again, I'm  
11 certainly not a landscape designer, and I don't  
12 want to design something here, but something  
13 that increases the scenic qualities of that  
14 parcel would, I think, would be an appropriate  
15 piece of mitigation.

16 MS. DUPREY: Are we only talking about  
17 Little Bay right now or are we talking about  
18 everything?

19 PRESIDING OFFICER WEATHERSBY: I think  
20 let's finish talking about this site right now.  
21 What I'm sensing from folks is that no one feels  
22 as though this, the Project impact on the Durham  
23 side is overly dominant or prominent in the  
24 landscape to the point that it becomes an

1 unreasonable adverse effect, particularly if we  
2 mitigate some of that effect, and the scope and  
3 scale of the change also does not rise to the  
4 level of unreasonably adverse given, with or  
5 without mitigation. I didn't eloquently say  
6 that, but does that pretty much, does anyone  
7 disagree with what I've just said?

8 So let's, let's go site by site. I think  
9 if we try to do all mitigation at the end it  
10 will be tricky so let's talk about mitigation  
11 for this site. Anything from concrete  
12 mattresses to towers to vegetation to neighbors  
13 in the immediate vicinity.

14 Mr. Shulock, looks like you have some  
15 ideas?

16 MR. SHULOCK: First I think we should point  
17 out that the Applicant believes that they've  
18 already done some mitigation by placing the  
19 transition tower at a point behind where the  
20 current poles exist. So I think they're  
21 probably talking about mitigation in addition to  
22 that.

23 And then for the concrete mattresses they  
24 proposed as mitigation dyeing and have agreed

1 and said that that's possible. Are people  
2 thinking about additional mitigation for the  
3 concrete pads other than dyeing?

4 PRESIDING OFFICER WEATHERSBY: I think the  
5 dye goes a long way to reducing the visual  
6 impact, and I think we heard testimony that over  
7 time organisms will attach, et cetera, and  
8 they'll fit in better in the landscape.

9 MR. SHULOCK: So then one of the other  
10 things that might be useful for mitigation but I  
11 didn't ask the question of the Construction  
12 Panel, and that's whether it would be possible  
13 to move that transition tower further back away  
14 from the shoreline to minimize its effect on the  
15 view. That's something I'd really like to do,  
16 but I don't know if I can. I don't know if we  
17 can. Other than that, all I see are plantings.

18 DIR. MUZZEY: I thought there was some  
19 discussion during the proceeding, the challenge  
20 of this parcel as it slopes upward that if you  
21 continue to push the transition tower up the  
22 hill it actually ends up appearing taller. And  
23 so the place where it is now was in some way the  
24 sweet spot between those two effects.

1           MR. SHULOCK: I was even thinking maybe on  
2 the other side of the road.

3           DIR. MUZZEY: Oh. Well, that's different.

4           MS. DUPREY: I guess I'm thinking that if  
5 they could have done that they would have done  
6 that because so many people have complained  
7 about this, but I do think that some additional  
8 plantings would help, and I do, when I look at  
9 the viewpoint of it from the side where when the  
10 trees were in front as opposed to head-on where  
11 it's completely bare ground, it seems to me  
12 there's some real opportunity there.

13           PRESIDING OFFICER WEATHERSBY: Mr. Way?

14           MR. WAY: Yes. This is, that's the part  
15 I'm wrestling with when we come up with these  
16 mitigation strategies and we say that it would  
17 make sense, more plantings. I don't, you know,  
18 I don't know what plantings would fit within the  
19 area. I also don't know the viewpoint of the  
20 Millers because we don't take a visual  
21 assessment from a private property. So, you  
22 know, it would be a scattergun approach to try  
23 to do, require mitigation with plantings if I  
24 don't know the circumstances around that area.

1           I mean, obviously, we want the Applicant to  
2 do as many plantings in the area to mitigate, I  
3 would imagine, to mitigate the view. I just  
4 don't know how prescriptive we're going to get  
5 in that process. Because as I think Mr. Shulock  
6 said, that's already in the works. That's  
7 already being planned, already been proposals  
8 for the Miller property with regards to  
9 planting. Is that planting adequate? I'm not  
10 sure I know, but --

11           PRESIDING OFFICER WEATHERSBY: We could  
12 have Mr. Lawrence or someone else review the  
13 plans as he -- there's been talk about the road  
14 crossings and that he would review those plans  
15 and approve them. We have to talk about that  
16 exact language. But again, we could have sort  
17 of that independent third party, you know, back  
18 to the original concept this morning of a  
19 monitor. An independent person to review plans  
20 and see if they're adequate. Can they do better  
21 within, you know, within a zone of  
22 reasonableness.

23           MR. WAY: I guess that's sort of what I'm  
24 thinking. There's a discussion here between the

1 Applicant and maybe the homeowner and the  
2 landscaper to find the best solution. How much  
3 do we get our hands into that process outside of  
4 the fact that we want it to occur.

5 PRESIDING OFFICER WEATHERSBY: I will say  
6 that the Applicant has, one of the stipulated  
7 conditions is that they will work with all  
8 landowners along the Project route affected by  
9 tree trimming, clearing or the construction of  
10 taller structures in the right-of-way to develop  
11 plans, work in good faith to reach agreement on  
12 vegetation plans. In the event dispute arises  
13 as to the Applicant's compliance with this  
14 condition, the Applicant and/or the landowner  
15 may submit a claim for resolution which should  
16 be restitution. Maybe it's resolution. As part  
17 of the mitigation and dispute resolution process  
18 described in Conditions 17 to 27. That's  
19 stipulated in proposed Condition number 33.

20 Mr. Shulock?

21 MR. SHULOCK: I don't know that that would  
22 suffice for this public view. We would have to  
23 do something separate for the public view of the  
24 bay. And I'd have to imagine that some sort of

1 planting could be devised to protect the view  
2 for people who are paddling when they could  
3 paddle in that area. The transition towers.  
4 Tower. The larger plantings, I agree, I don't  
5 think we could design. We'd have to just  
6 require that it be designed and maybe reviewed.

7 PRESIDING OFFICER WEATHERSBY: Eversource  
8 owns that parcel. And I'm actually kind of  
9 intrigued by, I think it's a radical idea and  
10 I'm not sure I'll go this far but may kick  
11 around Director Muzzey's thought of maybe they  
12 take down the house and put up a bunch of pines  
13 or something. You know. It's pretty radical.  
14 It's not sure it's necessary. But it's  
15 something I hadn't thought of. But to reduce  
16 the impact of the Project. I don't know. I  
17 just thought it was worth addressing her  
18 suggestion.

19 MS. DUPREY: I don't understand what taking  
20 the house down does.

21 PRESIDING OFFICER WEATHERSBY: I think it  
22 restores a more natural landscape.

23 MS. DUPREY: Can't you just put trees in  
24 front of it?

1 DIR. MUZZEY: The house is vacant now.

2 MS. DUPREY: Right.

3 DIR. MUZZEY: There had been some concern  
4 from the neighbors in addition to the impacts to  
5 their properties that the question of what would  
6 become of this parcel and would it add to what  
7 they considered the unsightliness of the  
8 Project.

9 MS. DUPREY: Seems like a pretty big step  
10 to ask someone to take a building down. I don't  
11 think I could feel comfortable with that.

12 MR. WAY: I think I'd have a hard time with  
13 that one, too, but I understand what you're  
14 saying. It's more thinking outside the box  
15 about what they might be able to do. But I'd  
16 have a hard time with that one.

17 MR. FITZGERALD: So I'm looking at the  
18 Applicant's Post-Hearing Brief and they state in  
19 addition to the commitments made by the  
20 Applicant in its stipulated proposed conditions  
21 of approval and as discussed above, the  
22 Applicant has proposed numerous avoidance,  
23 minimization and mitigation measures that  
24 represent best practical measures. Such

1 measures include, one, co-locations of a new  
2 line in an existing corridor; two, placement of  
3 the line under waters of Little Bay and  
4 placement of transition structures on both sides  
5 to minimize visual effect to users of the water.  
6 Three, selection of structured types, heights,  
7 placements and material to reduce visual  
8 presence in several locations along the  
9 corridor. And it goes on to a number, talking  
10 about crossings and so on.

11 But it seems to me that what's being said  
12 here is that several steps have already been  
13 taken to mitigate these impacts, and there's  
14 going to be some tradeoff because you might move  
15 the transition tower, say, to a location that  
16 has less impacts when you look from the middle  
17 of the bay, but it might put it right in  
18 somebody's backyard or, you know. So I think  
19 there's a delicate balance to be achieved here,  
20 and we have a stipulated conditions of approval,  
21 proposed conditions of approval include  
22 mitigation measures so I guess unless we want to  
23 go further beyond that.

24 PRESIDING OFFICER WEATHERSBY: So I would

1 agree that moving poles gets tricky, and I'm not  
2 personally in favor of trying to redesign pole  
3 locations, but I think the point that was made a  
4 minute ago is a good one in that in the  
5 stipulated condition to work with landowners  
6 doesn't address the public's view from Little  
7 Bay. And where Eversource owns this parcel, I  
8 think that one condition that we can implement  
9 is require them to develop a vegetation plan  
10 that will screen the poles.

11 DIR. MUZZEY: Partially screen.

12 PRESIDING OFFICER WEATHERSBY: As best as  
13 they can from people, reduce the prominence and  
14 dominance of structures from those using the bay  
15 both in the channel and closer to the shore, and  
16 I think exact words of which we'll let our  
17 wordsmith take care of but something like that.

18 MR. FITZGERALD: I wouldn't disagree with  
19 that.

20 MR. SCHMIDT: I'd like to add at least  
21 consideration similar to the road crossings an  
22 independent review of Mr. Lawrence, possibly,  
23 all public ways, so it kind of fits with the  
24 same philosophy, and if we give direction, then

1 there's two people who complement each other.

2 PRESIDING OFFICER WEATHERSBY: I think  
3 that's an excellent suggestion. We haven't got  
4 there yet, but we may want to do it on the other  
5 side of the bay as well.

6 DIR. MUZZEY: I would just note that repair  
7 and, repair of the Cable House is part of the  
8 historic mitigation package not only suggested  
9 for this SEC proceeding but also for Section 106  
10 and state regulations. So I would just say that  
11 the Cable House should be, should remain in view  
12 and part of that landscaping plan.

13 PRESIDING OFFICER WEATHERSBY: We wouldn't  
14 want to screen that. So it may reduce the  
15 screening for the structures, but that's an  
16 integral part of the shoreline and historic.

17 Should we go on to your next location?  
18 Anyone have anything else about the Durham  
19 Little Bay crossing? Okay.

20 MR. SHULOCK: We were going through the  
21 photosimulations so that would take us back to  
22 96.

23 MR. WAY: So the next one is the Dairy Bar?

24 MR. SHULOCK: The next one is the Dairy

1 Bar.

2 MR. SCHMIDT: One of the few I can't read.  
3 Old Post Road. Old Post Road before the Dairy  
4 Bar.

5 MR. SHULOCK: 96, electronic page 5.

6 MR. SCHMIDT: Sorry I jumped ahead.

7 MR. FITZGERALD: 5 and 6.

8 MR. SHULOCK: Number 7, UNH Campus Durham.  
9 Is that why we're looking at this?

10 MR. SHULOCK: So the first sim is of  
11 existing conditions. So the character to me  
12 looks like it's substantially developed already.  
13 It's that it's got utility poles that are quite  
14 a height already. And the next one shows the  
15 change so if you're looking at the prominence  
16 and dominance of those new towers, anybody have  
17 any issues with that?

18 DIR. MUZZEY: I may have my directions  
19 incorrect. I probably do. It's to the south of  
20 this location that the line goes underground and  
21 continues along the railroad track; is that  
22 correct? Yes. Okay. Thank you.

23 MR. IACOPINO: Transition structure right  
24 there.

1 MR. FITZGERALD: That last tower is the  
2 transition tower, isn't it?

3 DIR. MUZZEY: So it goes underground at  
4 that point and to the south. Remains  
5 underground.

6 MR. FITZGERALD: Goes under Main Street.

7 MR. WAY: The last tower closest to us.

8 MR. FITZGERALD: Right.

9 MR. SHULOCK: So it doesn't look like these  
10 have any lighting on them so I don't know that  
11 there would be any nighttime effects of these.  
12 I don't know of any mitigation at this location.

13 PRESIDING OFFICER WEATHERSBY: I think  
14 that, just jump in. Proposed Condition 32.  
15 That vegetation planting plans for the 13  
16 locations identified by Mr. Lawrence. I think  
17 that was one of these. The UNH Main Street  
18 overpass and UNH Gable Apartment Complex, UNH  
19 Gable's North Parking. I think that's this area  
20 if I'm not mistaken. Are the Gables apartments  
21 the ones on the rear left? Mr. Fitzgerald,  
22 you're an alum.

23 MR. FITZGERALD: They weren't there when I  
24 was there. I believe that to be the case.

1           PRESIDING OFFICER WEATHERSBY: That was my  
2 understanding from this case. So I think  
3 there's just been an agreement to develop the  
4 planting plan to shield the view of the new  
5 towers from those apartments in front, and from  
6 Main Street.

7           MR. FITZGERALD: I believe also part of the  
8 mitigation was the undergrounding.

9           DIR. MUZZEY: As was the use of the  
10 weathering steel to blend in with, although  
11 shorter, the tree line.

12          MS. DUPREY: I don't know. Are you really  
13 going to accomplish a lot doing a planting plan  
14 from the visuals from Main Street? I mean,  
15 there's an awful lot of the stuff that's already  
16 there that isn't really blocked by anything.

17          MR. FITZGERALD: It's already in the  
18 stipulation.

19          PRESIDING OFFICER WEATHERSBY: I'm just  
20 saying what's agreed to. We don't have to, I  
21 think the views from apartments can be screened?

22          MS. DUPREY: I get that. That part I get.

23          MR. WAY: I'm of the same mindset. I'm  
24 having a hard time envisioning what sort of

1 mitigation you do here in this very developed  
2 area over a railroad track. So I'll trust that  
3 what's been put in place and planned will  
4 suffice.

5 MR. SHULOCK: Are we ready to move on to  
6 the next?

7 PRESIDING OFFICER WEATHERSBY: Just to sum  
8 up, nobody finds this to be, the Project to have  
9 an unreasonable adverse visual impact on this  
10 location. I'm hearing no one say otherwise.  
11 We'll move on.

12 MR. SHULOCK: Little Bay Road and Frink  
13 Farm is next. Electronic 8. That shows  
14 existing conditions looking towards the Frink  
15 Farm. I think we can see the current  
16 distribution lines crossing the field. And then  
17 the next visual, they disappear. Because  
18 they've agreed to underground in that location  
19 and remove the poles. What we don't have here,  
20 I don't know if I have it written down. But  
21 there were simulations of the transition tower.  
22 Is that also 96?

23 MR. WAY: Transition tower that goes to the  
24 back of the farm.

1           DIR. MUZZEY: This view is looking what I  
2 think of as perpendicular to the line whereas  
3 what, we saw the --

4           MR. IACOPINO: Page 18 of this exhibit has  
5 what you're talking about there.

6           PRESIDING OFFICER WEATHERSBY: 17, 18.

7           MR. WAY: Where is that previous view in  
8 relationship with this view on page 18?

9           MR. FITZGERALD: This view is after it  
10 comes out of the transition tower.

11          DIR. MUZZEY: If you back up and move to  
12 the left and so you're looking at the power line  
13 rather than sort of at an oblique angle, you're  
14 looking at more sideways, what I called  
15 perpendicular. And you don't, you're not taking  
16 in the view of the power line beyond where the  
17 lines underground.

18          PRESIDING OFFICER WEATHERSBY: So I want to  
19 point out that on page 18, the transition  
20 structure that's depicted there, the three  
21 poles, there has been a change to that and it's  
22 now a single pole, and we do have a, actually I  
23 think it was Mrs. Frink that gave us the image,  
24 may not be exact, of what that would look like.

1 MS. DUPREY: Wasn't it backed up more into  
2 the tree line than this is showing?

3 DIR. MUZZEY: That gets back to the issue  
4 of mapping and where her property line is and  
5 where the tree line is. There was a good deal  
6 of confusion about that during the proceeding.

7 PRESIDING OFFICER WEATHERSBY: Where the  
8 conservation easement line with the Historic  
9 District line was?

10 MS. DUPREY: Historic District on the line.

11 PRESIDING OFFICER WEATHERSBY: The property  
12 line I think was depicted correctly.

13 DIR. MUZZEY: That's what I was referring  
14 to.

15 MR. FITZGERALD: Didn't we have a view from  
16 Mrs. --

17 MR. SCHMIDT: Yes. It's Frink Exhibit 10 I  
18 believe is the monopole.

19 MR. SHULOCK: They also have Applicant's  
20 142 at 18 and 19 which I think shows the single  
21 pole but doesn't show the actual design, the  
22 design of the tower which is different than what  
23 is depicted here. So if you could bring up  
24 Applicant's Exhibit 142, electronic page 18, so

1 that shows existing conditions and the next page  
2 shows the change with the current poles removed  
3 and a single transition tower at the very far  
4 end of the Frink property but within the tree  
5 line and with -- that's not the correct design  
6 of the pole. The pole actually has a larger  
7 base.

8 MR. FITZGERALD: The structure type is  
9 shown on the Frink 10.

10 MR. SHULOCK: So if you could bring up  
11 Frink 10? That's the actual design of the pole  
12 in a very, in closeup. So we have to sort of  
13 imagine backing up quite a distance to look at  
14 that.

15 MR. WAY: Are we sure that's the actual  
16 design of the pole? I seem to recall that  
17 wasn't accepted as a true representation. Where  
18 did that picture come from?

19 MR. FITZGERALD: I think this was Ms.  
20 Frink's picture, but what she had done is she  
21 had a picture of the pole design and she  
22 superimposed it on so it's not done accurately.  
23 I mean, obviously it looks to be floating in the  
24 area, but I was just suggesting that that's what

1 the pole looks like.

2 MR. SCHMIDT: As a comparison the base  
3 would be 8 feet according to testimony.

4 DIR. MUZZEY: Eight feet in diameter?

5 MR. SCHMIDT: Yes. Eight feet in diameter.

6 MR. SHULOCK: So I think what, again, we  
7 have to think about the existing character of  
8 that area, and the existing character is a  
9 historic farm with utility poles in the middle  
10 of the field. So I think we were judging the  
11 distance from the edge of the property because  
12 it's a, that's the public area. The Frink Farm  
13 itself is not the public area. So distance  
14 would be the distance to the road which is more  
15 or less the photosimulation. We've seen the  
16 scale and scope of the change which is to remove  
17 the current set of poles and lines and replace  
18 it with that type of tower all the way back  
19 within the line of the trees. It's not going to  
20 be lit so no nighttime issues. And we'd have to  
21 think about the dominance and prominence in the  
22 landscape.

23 MR. WAY: I was just going to say, it's a  
24 tradeoff here. We're undergrounding a portion

1 and taking away a set of poles and raising the  
2 height prominence of the ones in the back.  
3 Trying to think how, what would be the reaction  
4 if we started with the ladder and went to the  
5 first with new poles on a field that hadn't been  
6 developed previously and there'd probably be  
7 some concern about that.

8 I don't think it's, I think it may be  
9 adverse to a point and I don't think it's  
10 unreasonable, but I think also, too, it's,  
11 there's a benefit to having those other poles  
12 removed.

13 MR. SHULOCK: I think Mr. Lawrence actually  
14 considered it an improvement of the visual.

15 MR. WAY: I didn't want to go there, but I  
16 tend to agree at least for that short expanse.

17 DIR. MUZZEY: In looking in particular at  
18 page 19 of Exhibit 142, the simulated view, it  
19 also shows the additional poles beyond just the  
20 transition pole that we've been talking about.  
21 So in my mind we're taking what was a smaller  
22 distribution line away from the foreground but  
23 putting a larger installation, a more industrial  
24 installation in the background.

1 MR. WAY: Exactly.

2 DIR. MUZZEY: Which is an interesting  
3 change. I think given that our eyes are more  
4 accustomed to seeing distribution lines even in  
5 historic and agricultural areas, they have the  
6 effect of disappearing into the landscape  
7 whereas this larger one is a more prominent and  
8 dominant installation although further from the  
9 public view along the road.

10 I'm wondering again if there's any  
11 opportunity for landscaping in this area. We're  
12 not going to -- we're not going to certainly  
13 make the poles disappear. The measurements that  
14 Ms. Frink did when she was talking about the  
15 surrounding tree line were useful in making that  
16 clear. She also talked about a stone wall that  
17 at one time traversed the utility corridor that  
18 remains underground. I don't know whether if  
19 the reconstruction of that stone wall would add  
20 to the scenic qualities or not. Again,  
21 something to be explored by an expert. So  
22 within the realm of keeping the corridor safe in  
23 regard to clearance issues, I would be  
24 interested to know whether anything could be

1 added here to further make the new larger poles  
2 less dominant in the landscape.

3 PRESIDING OFFICER WEATHERSBY: I think over  
4 time some vegetation will grow in and the lines  
5 won't be as harsh. There may be some plantings  
6 that can go in. But we, here, unlike sort of  
7 maybe the, here they do need to get access to  
8 that area for maintenance so it's not like we  
9 can block it all off.

10 DIR. MUZZEY: No.

11 PRESIDING OFFICER WEATHERSBY: But there  
12 may be some opportunities for planting that  
13 should be explored.

14 MR. WAY: Can I ask a quick question?

15 PRESIDING OFFICER WEATHERSBY: Just a point  
16 of clarification on vegetation. Where those  
17 poles are located is not on the Frink Farm.  
18 It's on the Alfred Pickering Farm property, and  
19 my understanding of their involvement in this  
20 case, this Project, has been one of not great,  
21 if any, cooperation so there may be some  
22 resistance. That is private property and there  
23 may be some resistance from the Alfred Pickering  
24 Farm as to vegetation being planted there.

1           MR. SHULOCK: I think that the first pole,  
2           the transition pole is actually on Ms. Frink's  
3           property, and to the extent that the plantings  
4           can be made in front of it. Also, I don't know  
5           because of the historical value of the open  
6           fields within that district whether there might  
7           be plantings along the road. This would be a  
8           lovely place for lilac bushes. Right?  
9           Something like that. I'm not a designer.

10          MR. IACOPINO: Really?

11          MR. SHULOCK: No. I don't know how that  
12          would work, but I think a planting design might  
13          be explored anyhow because for, it's the person  
14          passing by really that we're protecting in this  
15          analysis.

16          PRESIDING OFFICER WEATHERSBY: Isn't the  
17          Frink Farm known for its scenic views and scenic  
18          quality is part of its registered listing, et  
19          cetera? I think we had testimony from Ms.  
20          Frink, too, that opposing suggested plantings  
21          along the roadway because it would block the  
22          views of that beautiful field.

23          DIR. MUZZEY: I would, I remember that  
24          testimony as well, and I had some concerns with,

1 as she described that, there are times when new  
2 landscaping plans can be adverse to a historic  
3 property and if there was a suggestion of  
4 roadside plantings that would change the open  
5 characteristic that fields had historically, I  
6 would want that reviewed by the Division of  
7 Historical Resources and some cooperative  
8 efforts between the landowner, the Applicant,  
9 the landscape designer and the DHR in order to  
10 ensure that the plantings were not adverse.

11 MR. SHULOCK: I was just suggesting that  
12 that could be explored, right?

13 DIR. MUZZEY: Um-hum. I think a  
14 cooperative effort would be good.

15 MR. SHULOCK: There are actually period  
16 plantings that might be appropriate to a farm of  
17 that period.

18 PRESIDING OFFICER WEATHERSBY: So what do  
19 people feel about the scope and scale of the  
20 visual dominance and prominence of the total  
21 activities that are going on around the Frink  
22 Farm?

23 MR. FITZGERALD: I believe we had one  
24 photograph, and I was trying to find it. I've

1           been through some of Mrs. Frink's exhibits, but  
2           there was a photograph that was looking sort of  
3           towards her house and around the corner you can  
4           see the transition tower. Does anyone recall  
5           that? At the time she was making a case that it  
6           could be viewed from the second floor of her  
7           house, so on, but I thought that was an  
8           interesting point of view.

9           MR. WAY: As I also recall, too, she could  
10          see it from her second floor in the distance, a  
11          bedroom in the distance.

12          PRESIDING OFFICER WEATHERSBY: I think it's  
13          Helen Frink Exhibit 3 is the aerial view of the  
14          Darius Frink Farm. That might be what you're  
15          considering?

16          MR. WAY: No. I don't think that's --  
17          Mr. Fitzgerald, I don't think that's what you  
18          were thinking about. I think you were looking  
19          at, there was one, oh, Exhibit 4. The farm  
20          buildings, I think you're --

21          MR. FITZGERALD: Yes. It was looking over  
22          the house. What did you say, Exhibit 4?

23          MR. WAY: Yes.

24          MR. FITZGERALD: No. There was a more

1 aerial view that looked over that.

2 PRESIDING OFFICER WEATHERSBY: Exhibit 3.

3 MR. FITZGERALD: 3? We've done 2 and 4.

4 DIR. MUZZEY: Does this bring us into the  
5 category though of more of a private property  
6 owner's concern rather than publicly accessible  
7 scenic resource concern?

8 MR. FITZGERALD: Well, I was more, I mean,  
9 it was presented in that context, but I was more  
10 just trying to bring it in as a sense of the  
11 overall view. This shows it, but this is not  
12 the photograph that I'm looking for. Question  
13 withdrawn.

14 PRESIDING OFFICER WEATHERSBY: People want  
15 to share any more views about their belief of  
16 whether this is, the changes going on here are  
17 unreasonably adverse because of their scope,  
18 scale, dominance or prominence? I mean, I  
19 personally, when I heard that they agreed to  
20 underground it across this farm I was thrilled.  
21 I think it makes a big difference to the Frink  
22 Farm, and Mrs. Frink may disagree with me to  
23 some extent, but I think visually the impact to  
24 the Frink Farm and those passing by, it's a big

1 improvement. It's not perfect because there are  
2 tradeoffs. You do have the structures behind.  
3 But I think over time, there will be some  
4 vegetation that will grow in and that will get  
5 minimized, but most of the open view of the  
6 fields and the farm is improved.

7 In addition to the general area where it's,  
8 all those folks, it's not what we're looking at  
9 here, but across the street all those folks at  
10 Hannah Lane don't have it running through their  
11 backyard anymore so. This is an instance where  
12 I commend the Applicant for agreeing to  
13 underground it through this section. I won't go  
14 on about how I wish it was more, but I don't  
15 think that the structures that are there now  
16 create an unreasonably adverse visual impact at  
17 all.

18 MR. WAY: I agree.

19 PRESIDING OFFICER WEATHERSBY: Anyone feel  
20 differently that an unreasonable adverse effect  
21 is created? Do you want to move on and do  
22 another one or do you want to quit? How are  
23 folks holding up?

24 DIR. MUZZEY: Could I just add something?



1 to resume with our next location. Mr. Shulock,  
2 can you direct us to what we should be looking  
3 at?

4 MR. SHULOCK: Yes. We're going back to  
5 Applicant's Exhibit 96. We would be on page 11,  
6 electronic page 11. That's Exhibit 13 A,  
7 existing conditions at Stratham Hill Park. And  
8 then the next page, page 11.

9 MR. WAY: Electronic page 11?

10 MR. SHULOCK: Electronic page 11. Exhibit  
11 13 A. Shows the existing conditions at Stratham  
12 Hill Park. So we're looking down at Little Bay.  
13 If we go to electronic page 12, you'll see  
14 electronic page 12 and this is the proposed  
15 conditions in the Project, you'll see in the  
16 upper right-hand corner it shows you the  
17 potential visible or area of potential visible  
18 structures. You can't see anything. I can't  
19 see anything.

20 DIR. MUZZEY: It's also on the right-hand  
21 corner as well. The right third.

22 MS. DUPREY: If I had xray vision, what  
23 would I be seeing there? Some towers?

24 MR. SHULOCK: Can we blow that up?

1 MS. GAGNON: What part?

2 MR. SHULOCK: If you could go to the right  
3 side of the same area where it says potential  
4 visual structures? I don't know if there are  
5 intended to be structures superimposed in there,  
6 but I really don't see any.

7 DIR. MUZZEY: As I recall, this is looking  
8 from a resource that was beyond the 3-mile  
9 limit, and so it is interesting to see something  
10 beyond that limit and how difficult at least in  
11 this view it is to see the Project.

12 MR. FITZGERALD: I would suggest the impact  
13 is pretty minimal.

14 MR. SHULOCK: So can we all agree no  
15 adverse impact on this one?

16 (No verbal response)

17 MR. SHULOCK: Okay. So then the next one  
18 would be Old Post Road in Newington. Electronic  
19 page 14 of 18. That shows the existing  
20 conditions. Once again, I don't detect any  
21 difference on the simulation. Going from 14 to  
22 15. Can anybody see anything at all?

23 (No verbal response)

24 PRESIDING OFFICER WEATHERSBY: So the

1 simulation information does say that the  
2 distance to the nearest visible structure is not  
3 applicable. I wonder if this is an underground?  
4 Should be an aboveground, but there's no poles  
5 visible.

6 DIR. MUZZEY: We're looking at the back of  
7 the Frink Farm in that photo. That's my  
8 understanding. That that brick building in the  
9 background is the Frink farmhouse.

10 PRESIDING OFFICER WEATHERSBY: Maybe it is  
11 underground through here which is why --

12 MR. SHULOCK: No visible structures. Can  
13 we all agree no adverse impact?

14 (No verbal response)

15 MR. SHULOCK: Then the next pictures are  
16 going to get us back to the Frink Farm, I think.

17 MR. FITZGERALD: This is looking east in  
18 the Frink Farm.

19 MR. SHULOCK: We've already looked at  
20 those?

21 MR. FITZGERALD: Yes, we have. And 18 is  
22 replaced by a single structure.

23 MR. WAY: Yes. Monopole.

24 MR. SHULOCK: So why don't we --

1 DIR. MUZZEY: Image on 16. Did we just do  
2 that?

3 MR. SHULOCK: That gets us to the Frink  
4 Farm.

5 DIR. MUZZEY: Thank you. Never mind.

6 MR. SHULOCK: We're looking at 14 now to  
7 see if we've done everything in 142.

8 MS. DUPREY: There are some different  
9 things in 52.

10 MR. SHULOCK: Why don't we go to Exhibit  
11 52.

12 MR. IACOPINO: Sorry. I think Garrison  
13 Hill Tower is on electronic page 3 of that, Mr.  
14 Shulock. Sorry about that. The one I couldn't  
15 find.

16 MR. SHULOCK: So if we go to electronic  
17 page 3 that starts review of the Garrison Hill  
18 Tower area. 4 shows us the existing conditions.  
19 That's quite a view.

20 DIR. MUZZEY: Nothing prominently shows.

21 MR. SHULOCK: So if you go to 5 that shows  
22 us the proposed, and visible structures would be  
23 under those arrows on the left-hand side so if  
24 you could enlarge that that would be great.

1           Even enlarged, it doesn't appear to be  
2 prominent from that location.

3           DIR. MUZZEY: I believe this is another  
4 area that's beyond the 3-mile limit.

5           MR. SHULOCK: Can we all agree? No  
6 adverse?

7           MS. DUPREY: Um-hum.

8           MR. FITZGERALD: Yes.

9           MR. SHULOCK: Keep going through this  
10 exhibit and see what we have. So next one we  
11 have is Scammell Bridge that starts on page 6.  
12 Existing conditions viewing the area from  
13 Scammell Bridge are on page 7. Proposed  
14 conditions are on page 8.

15          MR. WAY: That's beyond the three miles?

16          MR. SHULOCK: No. That's relatively close  
17 actually. It must say how close it is. Page 6.

18          MR. WAY: 1.99 miles. Two miles.

19          MR. SHULOCK: So not as close as I thought.

20          MS. DUPREY: Grayer day, too.

21          MR. SHULOCK: Considering our criteria, can  
22 we all agree no adverse impact?

23          MR. WAY: Agreed.

24          MR. SHULOCK: Next one is Little Bay.

1 We've already gone through Little Bay so what's  
2 after that. Route 4, Cedar Point in Durham.  
3 Starts on page, electronic page 12.

4 MR. WAY: .75 miles.

5 MR. SHULOCK: Page 13 would be existing  
6 conditions viewed from that point. Page 14  
7 would be proposed conditions. Visible  
8 structures area is over on the right if you  
9 could kindly enlarge that area.

10 Looking at even the enlargement, can we all  
11 agree no adverse impact from that one?

12 (No verbal response)

13 MR. SHULOCK: So if we keep going through.  
14 Next one is Kingsbury Hall. Which I don't even  
15 have on my list.

16 MR. IACOPINO: It's part of UNH.

17 MR. SHULOCK: Thank you. I didn't go  
18 there. You can tell.

19 MR. FITZGERALD: I spent four years in that  
20 building.

21 DIR. MUZZEY: Flashbacks.

22 MR. FITZGERALD: Nightmares.

23 MR. SHULOCK: So electronic page 16. Shows  
24 us the existing view from that location.

1 Electronic page 17 shows us the change. And I  
2 can actually see a change on this one. Does  
3 anybody feel like critiquing this one? Get out  
4 my criteria here. So we can see the existing  
5 character. I'm not as familiar with the UNH  
6 campus as some other people might be, but I  
7 think it was described as culturally important.

8 DIR. MUZZEY: Both culturally and  
9 historically important.

10 MR. SHULOCK: And some people would call it  
11 scenic.

12 DIR. MUZZEY: Um-hum. Although we do have  
13 an area that's characterized by large prominent  
14 buildings, at least one old, perhaps some new,  
15 as well as parking areas, a bridge, a new bridge  
16 from the looks of things with trees in the  
17 background. So it's more of an urban setting  
18 than we've been looking at in the area  
19 surrounding Little Bay, and it has some newer  
20 features, newer less scenic features included  
21 within the view.

22 MR. SHULOCK: So if we go to 17, we can see  
23 the change in the landscape. Scope and scale.  
24 I actually don't see that much of a change

1 personally, but --

2 PRESIDING OFFICER WEATHERSBY: It's a  
3 pretty big tower when people are walking and  
4 living. I think visually it does have an  
5 adverse effect, but given the amount of  
6 buildings and infrastructure in that area I  
7 can't say that in my mind, well, prominent?  
8 It's dominant in the landscape there. So I  
9 don't think it rises to the unreasonable adverse  
10 impact personally.

11 MR. SHULOCK: So I think it's prominent,  
12 but I don't think it's dominant. I think the  
13 buildings still dominate.

14 DIR. MUZZEY: I could see going, that it's  
15 a more dominant feature given that it's higher  
16 than the hall next to it. It adds additional  
17 lines. There's more, with the addition of lines  
18 it becomes more, not a solid plane, of course,  
19 but just the, all the additional lines, the  
20 heavier lines become more prominent as well. I  
21 would agree that it's adverse although not  
22 unreasonably adverse given the built nature of  
23 the surrounding setting.

24 PRESIDING OFFICER WEATHERSBY: Does anyone

1 disagree with these characterizations and find  
2 it rises to an unreasonable level?

3 (No verbal response)

4 PRESIDING OFFICER WEATHERSBY: Let's move  
5 on.

6 DIR. MUZZEY: I would just note that this  
7 is a more difficult area to, even if we were to  
8 suggest for mitigation, I am not sure if  
9 mitigation is possible in this setting.

10 MR. SHULOCK: So the next one in this  
11 exhibit would be Durham Main Street and Dairy  
12 Bar which I believe we've already gone through.  
13 So let's go beyond that to Wagon Hill farm which  
14 begins on electronic page 21. 22 shows us the  
15 existing conditions which look rural to me.  
16 Open, relatively undisturbed, at least from that  
17 vantage point.

18 MR. WAY: One mile away.

19 MR. SHULOCK: So on 23, can you enlarge  
20 that area where the arrow is? Can we all agree  
21 no adverse impact from this view?

22 PRESIDING OFFICER WEATHERSBY: I think we  
23 had testimony from Mr. Raphael about this  
24 property. There was discussion about the views

1 from this property on cross-examination, and  
2 there wouldn't be visibility because of the  
3 intervening vegetation if I remember right or  
4 perhaps -- I certainly can't see it and I  
5 remember this, being on the record and having  
6 discussions about it, there's limited or no  
7 visibility of the Project.

8 MR. SHULOCK: So the next one is Exhibit,  
9 begins on electronic page 24, and that is Fox  
10 Point in Newington. 25 shows the existing view  
11 from that location. 26 shows the change. This  
12 is another one where we rely on the arrows. If  
13 you could enlarge under those arrows, please?

14 DIR. MUZZEY: It does suggest that two  
15 weathering steel structures should be visible.  
16 One is 70 feet tall and one is 80 feet tall.

17 MR. WAY: I can see them.

18 MR. SHULOCK: You see them on 26?

19 DIR. MUZZEY: It becomes a little bit of a  
20 "Where's Waldo" type of thing.

21 MR. SHULOCK: I don't think they're  
22 prominent from that view.

23 DIR. MUZZEY: Doesn't seem to be adverse.

24 MR. SHULOCK: Can we all agree no adverse

1 effect?

2 MR. SCHMIDT: Yes.

3 PRESIDING OFFICER WEATHERSBY: Certainly  
4 not an unreasonable one so let's move on.

5 MR. SHULOCK: The next is view from the  
6 Great Bay National Wildlife Sanctuary that  
7 begins on page 27.

8 MS. DUPREY: What exhibit number?

9 MR. SHULOCK: We're still in Exhibit --

10 MS. DUPREY: On the side or on the top or  
11 wherever it is.

12 MR. SHULOCK: Exhibit 11 shows existing  
13 conditions at Great Bay National Wildlife  
14 Sanctuary. So looking at a view of the Project  
15 from that location on page 29. And if you'd be  
16 kind enough to enlarge the area under the arrow?

17 MR. WAY: Not adverse.

18 MR. SHULOCK: I think we'd all agree no  
19 adverse effect on that.

20 Next one in this exhibit is Little Bay Road  
21 in the Frink Farm which we've already gone  
22 through.

23 Next one after that is Stratham Hill Park,  
24 and we've gone through that one as well.

1 MR. SHULOCK: Fairchild Drive in Durham is  
2 the next area with the visual simulation. That  
3 starts on electronic page 36. 37 shows us the  
4 existing conditions in this residential, looks  
5 like a residential area.

6 MS. DUPREY: Do we know whose house that  
7 is?

8 MR. SHULOCK: I don't know.

9 MR. IACOPINO: I think it was probably  
10 taken as one of the samples of private  
11 properties that are required to accompany the  
12 VIA.

13 MR. SHULOCK: So 38 shows us the change.  
14 If you look over on the, about a quarter of the  
15 way in on the left-hand side you can see a pole.  
16 Top of the pole. Can you see it?

17 DIR. MUZZEY: Um-hum.

18 MR. FITZGERALD: Why are they required to  
19 submit --

20 MR. IACOPINO: It's in the rules. In the  
21 rules, they're supposed to provide a sample of  
22 private property simulations as well.

23 MR. FITZGERALD: Okay. And how are we  
24 supposed to treat those?

1           MR. IACOPINO: I would use them in your  
2 overall determination.

3           MR. SHULOCK: For this specific site I  
4 would go through the same process, I think.

5           MR. FITZGERALD: Yes.

6           MR. SHULOCK: It's a residential area.  
7 Forested. Have to have a reason to go here.  
8 The change is not dramatic. I mean, it is some  
9 change. There's some adversity to it in my  
10 opinion, but it's not unreasonable at least from  
11 this vantage point.

12          MR. WAY: From this vantage point.

13          PRESIDING OFFICER WEATHERSBY: This goes  
14 back to the whole thing with windshield, where  
15 your property values, where do you value and  
16 where you assess whether, how much of a tower  
17 can be seen and all that. Clearly the line runs  
18 behind that house because it's not an extension  
19 of this line or they'd show vegetation clearing.  
20 So if you're actually standing in that person's  
21 backyard, it may have much more dominant and  
22 prominent impact, but based on this picture  
23 which is provided by the rules, it does not  
24 appear to have an unreasonable impact.

1           MR. WAY: It doesn't have a lot of value.  
2           It really doesn't. Because like you said, if  
3           you're going to do this, the vantage point  
4           depends upon the homeowner and where they're  
5           most likely to see it, you know, where they  
6           live, but you're right, it's required for the  
7           rules, and so it is not adverse from this  
8           vantage point though.

9           MS. DUPREY: But also the closest you get  
10          to it with vegetation being there, the less you  
11          see of the pole. So the farther you're away,  
12          the more of the pole you're going to see because  
13          of the angle. But more interesting would be the  
14          house that the driveway is leading into. That's  
15          the house that's more affected in my view than  
16          the one that we can actually see the outline of.

17          PRESIDING OFFICER WEATHERSBY: Who knows?

18          MR. SHULOCK: So the next one here is Frost  
19          Drive beginning on electronic page 39. The  
20          Frost Drive crossing, I don't know exactly how  
21          these two relate, but Frost Drive crossing is an  
22          area that Mr. Lawrence identified as one of his  
23          13 in which the Applicant has agreed to mitigate  
24          adverse effects by doing the vegetation plan.

1           PRESIDING OFFICER WEATHERSBY: Is this  
2 where we stopped on the tour? Is that the one  
3 that had an empty house to the right? And we  
4 walked across the street as well?

5           MR. SHULOCK: Yes.

6           MR. FITZGERALD: Yes.

7           MS. DUPREY: I think the new poles look  
8 better than the old ones.

9           MR. FITZGERALD: Is that unreasonable  
10 improvement?

11          PRESIDING OFFICER WEATHERSBY: So in this  
12 one? Go ahead.

13          MR. SHULOCK: I'll let you go.

14          PRESIDING OFFICER WEATHERSBY: Just in  
15 summing up here, I mean the area is more rural,  
16 so there's a change in the area from the wooden  
17 distribution poles to the larger steel poles and  
18 more of the lines. But do folks feel as though  
19 this, the significance of the change and whether  
20 the poles are dominant in the landscape, does it  
21 rise to that level of an unreasonable adverse  
22 effect?

23          MR. FITZGERALD: It's different but not  
24 worse.

1 MR. WAY: I agree.

2 PRESIDING OFFICER WEATHERSBY: I think it's  
3 worse but not unreasonably.

4 MR. WAY: Opportunities for vegetation.

5 PRESIDING OFFICER WEATHERSBY: I think with  
6 mitigation it will help.

7 DIR. MUZZEY: What was noteworthy to me  
8 about the before and after we do get a better  
9 view of what tree clearing may look like because  
10 in the image of PDF 41 we do see a great deal  
11 more cleared, and the scrubby brush that we see  
12 in the before shot is not there. But this is on  
13 the list of places to be vegetated, is that --

14 MR. SHULOCK: That's correct.

15 MR. SCHMIDT: That's correct.

16 DIR. MUZZEY: That seems appropriate.

17 MR. SHULOCK: Okay. Let's move on then.

18 Next one is the Newington Mall Shopping Center.  
19 Newington Mall Shopping Center showing existing  
20 conditions. They already have transmission  
21 lines going through the center. Transmission  
22 lines. Then the change shown on 44. As you can  
23 see, there's an addition of multiple structures.

24 MR. FITZGERALD: I guess my thought on this

1 would be it's a pretty significant change but  
2 it's not a very visually scenic area to start  
3 with.

4 PRESIDING OFFICER WEATHERSBY: It's a mess.  
5 I mean, it really is.

6 MR. FITZGERALD: They need better malls.

7 PRESIDING OFFICER WEATHERSBY: It's hard  
8 for me to believe there was not some way to  
9 consolidate some of those poles and tidy it up.  
10 I know they're going in some different  
11 directions and they're coming from all of the  
12 power infrastructure further down Gosling Road.

13 MR. FITZGERALD: And this is looking in the  
14 wrong direction. I mean, this goes right over  
15 to a highly industrialized area, connecting to  
16 the power plant and so on. I wouldn't argue  
17 that it's not a significant change, but --

18 PRESIDING OFFICER WEATHERSBY: It's a  
19 developed area, and people that are in this area  
20 are there to shop. They're not there for the  
21 scenic views. They are going to be upset  
22 because parking spaces will be eliminated. It  
23 makes it, goes from bad to worse.

24 MS. DUPREY: I'm not sure why we're looking

1 at it. I thought we were supposed to be looking  
2 at scenic things. Nothing scenic about this.

3 PRESIDING OFFICER WEATHERSBY: This is a  
4 private property. The mall.

5 MR. SHULOCK: So the next in this series --

6 DIR. MUZZEY: Could I interrupt for a  
7 moment? I'm sorry. Before we were looking at  
8 the images from the mall area, is that Frost  
9 Drive or Hannah Lane?

10 PRESIDING OFFICER WEATHERSBY: Frost Drive.

11 DIR. MUZZEY: Okay. Because it says  
12 something else on page 39 in the text but okay.  
13 I just wanted to clarify that it was Frost.  
14 Thank you.

15 MR. SHULOCK: So simulations for the Nimble  
16 Hill Road start on page 45.

17 PRESIDING OFFICER WEATHERSBY: I'm just  
18 going to interrupt for a moment. I've been  
19 reminded I don't think we reached a conclusion  
20 about the mall. Do people feel as though  
21 there's an unreasonable adverse effect on this  
22 property?

23 MR. WAY: Not attractive, but not  
24 unreasonably adverse.

1           PRESIDING OFFICER WEATHERSBY: Does anybody  
2 feel there is an unreasonable adverse effect?

3           MR. SCHMIDT: No.

4           MR. SHULOCK: No.

5           PRESIDING OFFICER WEATHERSBY: Okay.

6           MR. SHULOCK: If we go to 46, that shows us  
7 the existing conditions at Nimble Hill Road.

8           MS. DUPREY: What is Nimble Hill Road?  
9 It's a scenic road, is that it? Is this where  
10 the Town Hall is, near the Town Hall?

11          MR. FITZGERALD: Yes.

12          MR. WAY: This is the parking lot for the  
13 Town Hall, correct? Or is it? Was it a school?

14          PRESIDING OFFICER WEATHERSBY: This is the  
15 school.

16          MR. IACOPINO: It's private property.

17          MR. SHULOCK: These are the open fields by  
18 the school, right?

19          DIR. MUZZEY: Baseball diamond?

20          MR. SHULOCK: Yes. So basically through  
21 the town center.

22          MR. FITZGERALD: Smokestack in the back.  
23 Is that Newington station?

24          MR. SHULOCK: So everybody's got a good

1           idea of where we are? And 47 shows us the  
2           change in that viewscape. Which places taller  
3           poles and looks like more substantial wires,  
4           more visible wires through that open field.

5           MS. DUPREY: In the proposed picture, looks  
6           like there's a smaller pole in the background.

7           MR. SHULOCK: I think there's an  
8           existing --

9           MS. DUPREY: But it doesn't look like it's  
10          in the same place as the picture above. Maybe  
11          it's the angle. Are they relocating it?

12          MR. SHULOCK: I think they're removing the  
13          poles that are there and relocating them, and I  
14          think they spread them out a bit.

15          MS. DUPREY: Too bad they couldn't all be  
16          on one.

17          MR. SHULOCK: If you look at the first one  
18          and in the view, there are two poles but in the  
19          second one there's really only one pole visible  
20          in the middle of the field.

21          MR. WAY: I think it's prominent. It's  
22          adverse. I don't think it rises to the level of  
23          unreasonable. Not attractive, but --

24          MR. SHULOCK: I would agree with that.

1 MS. DUPREY: I think I saw the poles were  
2 lower heights. Did I see 70 to 75 feet?

3 PRESIDING OFFICER WEATHERSBY: Says 70 to  
4 75 feet proposed and it's existing ones -- 130  
5 foot right-of-way. 70 to 75 foot transition  
6 structures.

7 DIR. MUZZEY: Four.

8 PRESIDING OFFICER WEATHERSBY: That's what  
9 it says? 107-18. Two poles, F 107-16, F  
10 107-18. I was reading the four sets of numbers.  
11 There's four poles, but it's reversed to two  
12 poles. That are visible in this picture.

13 DIR. MUZZEY: Has the Town of Newington  
14 voiced any concerns about this particular  
15 location?

16 PRESIDING OFFICER WEATHERSBY: Many.

17 DIR. MUZZEY: It's right near their civic  
18 center.

19 PRESIDING OFFICER WEATHERSBY: They  
20 adamantly want this buried. It's a scenic road  
21 that's right in the town center, open fields,  
22 and this is a very, seems to be of great concern  
23 to the Town of Newington.

24 DIR. MUZZEY: Um-hum.

1           PRESIDING OFFICER WEATHERSBY: I agree it  
2 changes -- this is a harder one for me.  
3 Probably the hardest one yet. Because to me it  
4 dramatically changes that landscape. And it  
5 continues on.

6           MR. FITZGERALD: Are we still talking about  
7 Nimble Hill?

8           PRESIDING OFFICER WEATHERSBY: Yes. PDF  
9 47.

10          MR. FITZGERALD: Right.

11          MS. DUPREY: Was any mitigation proposed  
12 for this? I'm not sure what you could do but  
13 just wondered.

14          PRESIDING OFFICER WEATHERSBY: It's not one  
15 of those crossings. I think that the general  
16 agreement to work with private property owners  
17 to develop vegetation plans. Hard when it's an  
18 open field. Kind of like Mr. Frizzell's  
19 property. What do you do? You can't really  
20 screen it. In this case probably here you can't  
21 consolidate any lines. They want it to go  
22 underground. That's one possible mitigation  
23 measure.

24          MR. SHULOCK: Although they might be able

1 to come to some agreement with private property  
2 owners to do some screening that would block the  
3 view from the road in the parking lot. It  
4 wouldn't help the owner of the field, but it  
5 could help the community with their views of the  
6 structures.

7 DIR. MUZZEY: Do we know if this is going  
8 across private property or is it town-owned open  
9 space?

10 MR. SHULOCK: This field is privately  
11 owned.

12 DIR. MUZZEY: It's classified as private  
13 property at this point, but the view is across  
14 the town's civic center.

15 MR. SHULOCK: So is this the one where we  
16 actually viewed them from this road, we went to  
17 the private, the owner, home of the person who  
18 owns the field and looked at it from the other  
19 side?

20 MR. FITZGERALD: We looked at it going  
21 down. Went down around the corner and looking  
22 at it looking down the corridor.

23 MS. DUPREY: Is this a historic site?

24 PRESIDING OFFICER WEATHERSBY: The road

1           itself is a scenic road, designated scenic road,  
2           but the field as far as I know is not cultural  
3           landscape or historic.

4           MS. DUPREY:   So are we looking at it as  
5           private property or are we looking at it because  
6           it's a view from the scenic road?  And is that  
7           really what we're, do we look at the view from  
8           the scenic road?  Or is that how structures  
9           affect a scenic road by being alongside it which  
10          this isn't.  I'm mixed up.  I think I better go  
11          back and study that tonight.

12          MR. FITZGERALD:  It's my understanding that  
13          you look at it from the resource and that you  
14          evaluate that view which is I think is this is  
15          what we're getting.  We're essentially standing  
16          on the road looking across the parking lot and  
17          then across the field, but I think for a scenic  
18          road, it's scenic because of the view from the  
19          road.  So you know, I would certainly think that  
20          there's some --

21          MR. IACOPINO:  There is a revision to this.  
22          It's in Applicant's Exhibit 186.

23          MR. SHULOCK:  And along these lines while  
24          everybody is getting there, factor number 6 is

1 the extent to which the facility would be a  
2 dominant or prominent feature within a natural  
3 or cultural landscape of high scenic quality or  
4 as viewed from scenic resources of high value or  
5 sensitivity.

6 MR. WAY: Just so I understand, when I look  
7 at this property, I'm looking at the map, is  
8 this an athletic field?

9 MR. SCHMIDT: Looks like it's got a  
10 diamond.

11 MR. WAY: Baseball field. I'm seeing  
12 soccer nets left there for the winter. I don't  
13 know if that impacts our view of it, but --

14 MR. FITZGERALD: 186 certainly is an  
15 improvement.

16 PRESIDING OFFICER WEATHERSBY: Looks like  
17 they moved the pole further out from the middle,  
18 further to the right. Hard to tell where  
19 exactly that it got moved to. 186, page 3.

20 MS. DUPREY: Got moved to the left. Got  
21 moved to the right?

22 PRESIDING OFFICER WEATHERSBY: Two poles  
23 that moved.

24 MR. FITZGERALD: Looks like they increased

1 the span.

2 MR. WAY: Um-hum.

3 MR. FITZGERALD: Couple of old poles got  
4 removed.

5 MS. DUPREY: It's better.

6 MR. FITZGERALD: Significantly better.

7 DIR. MUZZEY: So does anyone have a sense  
8 of, it's clear where the pole is about one-third  
9 of the way over from the left-hand side, but can  
10 anyone see where the next pole is? Is it just  
11 behind those relatively small trees so it  
12 happens to be sort of a fortuitous view or --

13 PRESIDING OFFICER WEATHERSBY: I think it's  
14 just to the left of the tree on the right. You  
15 think that's it?

16 DIR. MUZZEY: I think so. Thank you.

17 MR. WAY: Left of the tree on the far  
18 right.

19 MR. FITZGERALD: Yeah, yeah. Way over.

20 PRESIDING OFFICER WEATHERSBY: So before  
21 this revision I was prepared to say that the  
22 effect on the field and from the scenic road was  
23 an unreasonable impact, but the revision helps  
24 me a lot. I do think it's still a serious

1 adverse impact, but I don't think it rises to  
2 the level of unreasonable anymore. Maybe  
3 there's some additional screening or something  
4 that can get done, but that's, I appreciate the  
5 efforts to reduce the impact. It's still, it's  
6 an unfortunate impact, but I don't think --  
7 unreasonable is a pretty high hurdle in my mind,  
8 and I don't think now it rises to that.

9 MR. FITZGERALD: So I'm wrestling with the  
10 scenic road. This doesn't seem particularly  
11 outstandingly scenic to me. The road has been  
12 designated scenic for whatever reason. I don't  
13 know about this location. But I feel sort of  
14 like what Mr. Raphael said sometimes was yeah,  
15 you know, it's beautiful, but it's not --

16 MR. WAY: Reasonable person.

17 MR. FITZGERALD: Yeah. So my viewpoint  
18 here is that there's an impact here. I don't  
19 see this as being particularly scenic in the  
20 first place, but it is designated as a scenic  
21 road so how do we address that?

22 DIR. MUZZEY: It's not a very scenic photo.  
23 I mean, we're staring at, you know, dirty snow  
24 piles in the back of a parking lot. This is

1 just one capture of a roadway that may have  
2 higher scenic values if we just traveled 25, 30  
3 feet in either direction. I think that was a  
4 lot of, particularly people in the community  
5 this Project goes through disagreed with Mr.  
6 Raphael because they didn't like how he  
7 characterized scenic resources.

8 I think it's fortunate that we do have this  
9 view, and I would agree with our Chair that the  
10 changes that have been made have lessened the  
11 adverse nature and the prominence of the  
12 transmission line going through this part of the  
13 roadway view.

14 MR. SHULOCK: I also think there still may  
15 be opportunities for mitigation. It might  
16 require some agreements with the town if it's  
17 town property, the school if it's school  
18 property or with the private owner to put some  
19 plantings closer to the road that would block  
20 the distant view of those wires. Might make the  
21 roadway itself scenic.

22 MR. WAY: I guess this is to my early  
23 point. It's an athletic field. So I'm not sure  
24 what mitigation could be done or even desired at

1           this point. I do agree that the changes made  
2           are better. Sure, certainly for the better.  
3           But I still maintain it doesn't rise to anything  
4           other than adverse certainly. Not great but not  
5           unreasonable.

6           MR. FITZGERALD: I guess that's what I was  
7           wrestling with Dave brought up here is that  
8           mitigation, say trees or something along this  
9           back of the parking lot, are you blocking what  
10          is supposedly scenic that I don't consider to be  
11          particularly scenic? You know.

12          DIR. MUZZEY: I do think we're dealing with  
13          limited information at this point of the day and  
14          just with this view. I'm comfortable with  
15          adding it to the list of some other places we've  
16          assembled to see if the Applicant can work with  
17          the property owners and our landscaping experts  
18          to see whether anything can be done here. I  
19          don't think we're going to fix that out among  
20          ourselves right now though.

21          MR. SHULOCK: So --

22          PRESIDING OFFICER WEATHERSBY: Before I  
23          move on, I just want to, on this site right  
24          here. Maybe you want to take it up tomorrow,

1 but I just wanted to have us address the fact  
2 that a mitigation measure that has been  
3 suggested by the Town of Newington is for the  
4 line to be, continued to be buried past the  
5 Hannah Lane neighborhood and through this whole  
6 area, residential district, past Fox Point Road  
7 and the whole residential district in Newington  
8 which would include this property here. If we'd  
9 like to comment on that suggested mitigation  
10 measure.

11 MS. DUPREY: I don't think we should  
12 comment tonight. It's 6 o'clock. We said we  
13 were going to be here until 5:30. He was  
14 supposed to leave by 5:45. I think we should  
15 have the evening to think about it.

16 PRESIDING OFFICER WEATHERSBY: We've got  
17 one more photo sim.

18 MR. IACOPINO: Exhibit 52.

19 PRESIDING OFFICER WEATHERSBY: Two more.  
20 There's another one.

21 MS. DUPREY: Again, it's six o'clock. We  
22 said we were leaving at 5:45. I don't think we  
23 need to do it tonight.

24 PRESIDING OFFICER WEATHERSBY: I think if

1 we go ten minutes we can wrap up visual.

2 DIR. MUZZEY: We still have to talk  
3 about -- I feel like there's more to talk about.

4 PRESIDING OFFICER WEATHERSBY: All right.  
5 Want to quit?

6 MR. FITZGERALD: Say good night.

7 MS. DUPREY: Quitting time.

8 PRESIDING OFFICER WEATHERSBY: We'll quit  
9 for the evening. When we come back, we'll talk  
10 about possible burial through Newington, address  
11 the remaining photo sim.

12 MR. IACOPINO: Exhibit 52 page 48 which is  
13 Old Post Road.

14 PRESIDING OFFICER WEATHERSBY: And the  
15 other one we looked at but didn't specifically  
16 address was the Newington landing of Little Bay.  
17 The Newington side of Little Bay. So with that  
18 we're adjourned for the evening.

19 (Deliberations recessed at 6:02 p.m.)

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23

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C E R T I F I C A T E

1  
2 I, Cynthia Foster, Registered Professional  
3 Reporter and Licensed Court Reporter, duly authorized  
4 to practice Shorthand Court Reporting in the State of  
5 New Hampshire, hereby certify that the foregoing  
6 pages are a true and accurate transcription of my  
7 stenographic notes of the hearing for use in the  
8 matter indicated on the title sheet, as to which a  
9 transcript was duly ordered;

10 I further certify that I am neither  
11 attorney nor counsel for, nor related to or employed  
12 by any of the parties to the action in which this  
13 transcript was produced, and further that I am not a  
14 relative or employee of any attorney or counsel  
15 employed in this case, nor am I financially  
16 interested in this action.

17 Dated at West Lebanon, New Hampshire, this 13th  
18 day of December, 2018.

19  
20 \_\_\_\_\_  
Cynthia Foster, LCR